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An Industrial Policy of the Right

Robert B. Reich

The Charmed Life of Head Start — *Peter Skerry*

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FALL BOOKS SUPPLEMENT

Reviews by William Kristol, Mark Lilla, Richard N. Langlois, Edward C. Banfield, Jeremy Rabkin, Mary Tedeschi, John Mueller, William A. Schambra, Lawrence M. Mead, Delba Winthrop, and Neal Devins

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An industrial policy of the right

ROBERT B. REICH

INDUSTRIAL policy has become something of a political Rorschach test. The term somehow summons each person's fondest hopes or direst fears. Direct evidence of this phenomenon is to be found in the last issue of *The Public Interest*, in which Professor Amitai Etzioni casts a caricature of Japan's "MITI" and then proceeds to show why such a straw man could not (and should not) survive in the United States; and George Gilder claims that industrial policy is at best no more than supply-side economics in rather perverse disguise.[1] Lost in this ideological shuffle are the facts about what America's *actual* industrial policy is coming to look like, and an explanation of the central questions it raises for our republic.

A nation's industrial policy is the sum of its microeconomic policies—like tax rules, research and development grants, credit subsidies, and import restrictions—as they affect the pace and direction of industrial change. Every advanced nation has an industrial policy, just as it has fiscal and monetary policies. And just as fiscal and monetary policies may be deemed "good" or "bad"—depending on

[1] George Gilder, "A Supply-Side Economics of the Left," and Amitai Etzioni, "The MITIzation of America?" *The Public Interest* 72 (Summer 1983).

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TABLE I. *Effective rate of corporate income tax, by industry*[1]

Automobiles	48%	Airlines	16%
Trucking	46%	Metal manufacturing	10%
Pharmaceuticals	36%	Utilities	9%
Electronics, appliances	29%	Aerospace	7%
Food processing	27%	Petrochemicals	5%
Industrial and farm equipment	24%	Crude oil	3%
Retailing	23%	Commercial banks	2%
Oil and refining	19%	Railroads	–8%
Diversified financial	17%	Paper and wood	–14%

[1] Source: Joint Committee on Taxation, *Taxation of Banks and Thrift Institutions* (March 9, 1983): Table 2. (There are a number of ways to compute effective tax rates, and some computations generate results slightly different from these; but regardless of methodology, great disparities exist.)

how one values and ranks the ultimate goals to be achieved, and on empirical assumptions about how the economy responds to various policy choices along the way—so too can a nation's industrial policy be judged by the values it serves and the economic logic on which it depends.

U.S. industrial policy today

What is the industrial policy of the United States? One clue can be found in Table I, which reveals sharp disparities in the effective rate of corporate income tax paid by various industries in 1981. The industries with the lowest effective tax rate, interestingly, are either service industries largely sheltered from international competition (retailing, finance, airlines, utilities, commercial banks, railroads), or natural-resource industries (oil and oil refining, petrochemicals, crude oil, and paper and wood products). Aerospace and metal-manufacturing also fare relatively well. Manufacturers of automobiles, trucks, pharmaceuticals, appliances and electronics, on the other hand, bear a relatively high effective tax.

We get a somewhat different picture if we look at another set of disparities—the percentage of industrial research and development funded by the federal government (Table II). The federal government supports roughly half of all research and development undertaken in the United States, and upwards of 75 percent of basic research. (This sample is from 1977, the most recent year for which such data are available.)

Here aerospace again is among the winners, and automobiles and pharmaceuticals among the losers. But the petrochemical industry

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TABLE II. *Percentage of research and development funded by the federal government, by industry*[1]

Aircraft and parts	70%	Motor vehicles	8%
Transportation equipment (excludes autos)	55%	Non-electrical machinery	7%
Fabricated metals	53%	Petrochemicals	2%
Communications equipment, electronic components	49%	Primary metals	2%
Electrical equipment (excludes communications)	26%	Drugs and medicines	<1%
Scientific instruments	22%	Textiles and apparel	<1%

[1] Source: National Science Board, *Science Indicators, 1978* (Washington D.C.: 1979).

now becomes something of a loser, while electrical equipment moves into the winner's camp. Nor does this allocation of research and development subsidies reveal the same bias against internationally-traded manufacturing industries as does the effective tax rate.

This inventory could go on. In the cases of federally-subsidized loans (amounting to some $56 billion in new loans to specific industries in 1982) and loan guarantees ($36 billion), the biggest winners by far are housing construction and agriculture, with aerospace and aircraft equipment coming in a distant third.[2] On the other hand, the major industrial beneficiaries of import restrictions are steel, textiles, apparel, and automobiles (together comprising approximately one-fourth of all U.S. merchandise imports). And the federal government obligingly purchases most of the output of the firms that produce aircraft, communications equipment, super computers, and lasers.

What is the net result of all this? We cannot really know without charting the interdependencies among our industries, and measuring how disparities in government treatment alter their profitability—how, for example, differences in effective tax rates or research and development grants affect cost structures, ease of entry or exit, and the speed with which new market opportunities can be exploited.

What we do know, however, is that the current patchwork of policies yields some odd results. For example, the United States automobile industry (on which one out of every six American workers directly or indirectly depended for a livelihood in 1980) owes

[2] This tally of subsidized loans and loan guarantees does not include such welfare and relief programs as housing for the elderly and handicapped, low-rent public housing, SBA disaster loans, and veterans' programs.

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its present condition, at least in part, to a mixture of generous import restrictions and loan guarantees, onerous environmental regulations, relatively high effective tax rates, and little or no government-supported research. On the other hand, the housing-construction industry has been the indirect beneficiary of large credit and tax subsidies to American homeowners, the cumulative effect of which has been to help channel approximately one-third of U.S. gross domestic fixed investment over the last dozen years into housing and to transform our housing stock into a form of savings for countless middle-class families. The federal government spends five times more on research and development for commercial fisheries than it does for steel. As of 1980, the government was providing $455 million annually in tax breaks for timber and none for semiconductors. And the fact that substantial benefits go to industries sheltered from international competition notwithstanding, some of the chief recipients of government largesse—like aircraft, communications equipment, electronic components, wheat, and soybeans —are among our most successful exporters.

Clearly, government strongly affects the pattern of industrial development in the United States. But does this amount to an industrial "policy"? The term suggests some intention, purpose, plan. Yet these patterns appear to be nothing but the fallout from separate government programs designed to achieve all manner of things—ensure national security, provide Americans with decent housing, protect domestic energy supplies, and so on. The programs are not intended to advance (or retard) the development of specific industries. No one picks the winner and losers; they are anointed inadvertently.

Tell that to the National Association of Home Builders, the lobbyists for General Motors or Boeing, lawyers representing the nation's largest banks before the Internal Revenue Service, the government relations staffs at General Dynamics and TRW, and members of the House Ways and Means Committee. They will be amused. True, the official language appearing in the *Congressional Record* and in administrative rulings—justifying this or that tax credit, loan guarantee, or research subsidy—typically makes at least vague reference to the public interest. It would be unseemly not to. And all but the most confirmed cynics would concede that many of these programs do benefit broad segments of the public. After all, we do want an effective national defense and affordable housing. But the fact is that these public benefits are often incidental to the choice of what industry (or what segment of what industry) ac-

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tually comes out the winner.[3] Those who promote and shape public policy in America usually know fairly well how a given policy will affect the development of a specific industry. Indeed, such a purpose often lies at the very heart of the initiative, encased within layers of public justifications bearing no direct relation to it. And more often than not, the most heated legislative and administrative battles concern not the wisdom of the policy itself but the underlying heart of the matter—which industry will win and which will lose by it. Winners and losers are picked all the time; the picking is the stuff of politics.

Nor is it possible *not* to have an industrial policy. Laws and agency rulings need not specifically target winners and losers in order for their effects to be highly discriminatory. Because each industry (or industrial segment) has a distinct competitive position relative to all others—based upon the costs it bears and markets it serves—any seemingly even-handed program is likely to affect it differently from others. Even something so apparently neutral as a tax credit for new capital investment favors industries whose competitive success hinges on continually updating plant and equipment, relative to industries that depend on the careful hiring and training of personnel or on the use of sophisticated marketing techniques. (Thus, the disparities noted above in effective rates of corporate income tax are due not so much to tax breaks targeted to particular industries as to differences in the ability of industries to take advantage of superficially neutral deductions and credits.) Most industry lobbyists—and not a few legislators and government officials—well understand that no tax, credit, or subsidy program, however neutral in appearance, is neutral in competitive effect.[4]

Disparities like these are inevitable so long as government has any role to play in the economy, even the minimal roles of setting the rules of the game (should copyright protection be extended to cover the circuitry etched on computer chips? should coal slurry pipelines have "eminent domain" authority to run beneath railroad lines?), and purchasing "public goods" (national defense alone will

[3] "Industries" are of course convenient constructs, referring to clusters of firms sharing similar situations of supply and demand. Much of the stuff of politics occurs *within* industries, between smaller clusters (or "segments") of firms serving different groups of customers within the same market, and facing different cost structures.

[4] This political and economic reality apparently has been lost on several otherwise thoughtful commentators. For example, Professor Amitai Etzioni in these pages argued against a targeted industrial policy in favor of a system of government "incentives . . . focused on wide sectors of the economy, not specific industries . . . [which] are much less subject to political pork-barreling. . . ."

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continue to consume 5 to 10 percent of our gross national product, largely in the form of procurement contracts and subsidies conferred discriminately on the private sector). Beyond these basic functions, other aspects of government involvement are appropriate to an advanced industrial nation. For example, in many industries the social return to investment in new products and processes is substantially higher than the private return to individual investors, because new knowledge "leaks" out into the market. Thus individual investors left to their own devices will systematically underinvest in our industrial future. For this reason, all governments busily support commercial research and development; ours is no exception. And finally, at the other end of the industrial spectrum, there is the political certainty that industries seriously threatened by imports will demand and often obtain protection, unless or until their capital and labor can easily shift to new undertakings.

In short, the United States has an industrial policy. It always has and always will. But our present industrial policy is of the "do-it-yourself" variety—spearheaded by our most politically active and sophisticated industries and firms. Industrial development is the goal, but not the nation's overall industrial development. There are winners and losers, but they bear no particular relation to those industries or segments that could be expected either to advance or decline as the national economy moved rapidly to a more productive and internationally competitive industrial base. Our industrial policy lies buried, and the choices it embodies are never clearly posed: Should we be channeling so much of our nation's capital into home construction, and so little into, say, machine tools? Could we achieve national defense objectives equally well by nurturing technologies with more direct commercial applications? Should we help our steel and automobile industries reduce and consolidate their operations—granting them relief from antitrust laws and subsidizing employee retraining—instead of merely continuing to protect these industries from international competition? We do not know the answers to questions like these, in large part because we lack any institutional mechanism for asking them.

The limits of macroeconomics

We could continue to ignore our industrial policy if fiscal and monetary policies were up to the task of supporting the economy on their own. But fiscal and monetary policies have revealed troublesome shortcomings of late. For example, no one any longer

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knows how to control the money supply because no one any longer knows what money is. With the recent explosion of financial services, money held in cash or checking accounts quickly transmogrifies into all manner of things, and then back again. What is more, financial capital now sloshes across national borders with scant respect for macroeconomic managers. As France has painfully discovered, any attempt to expand a single economy if others are not following suit causes imports to rise, the domestic currency to depreciate, and import prices thereby to increase, with inflationary consequences. On the other hand, our current experience confirms that high real interest rates at home attract foreign savings, raise the value of the domestic currency in international exchange, and thus cripple exports. None of this is meant to suggest that macroeconomic management is a futile exercise, only that it is becoming ever more constrained.

Even more telling is the dismal performance of the American economy over the last dozen years. As I write this the nation appears to be recovering from one of the worst recessions in the postwar era. Let us hope that as you read this the recovery is still progressing. But the longer-term trends are less encouraging. More than ten million Americans are jobless, with millions more either too discouraged to look for work or working at part-time jobs when they want full-time. Each downturn in the business cycle has been progressively worse in this regard: Two recessions before this one (1970 and 1975) claimed, respectively, 6 percent and 8.2 percent of the workforce; down to 5.8 percent and 7.7 percent, respectively, in the first year of recovery. Our Council of Economic Advisors now speaks of a new "natural" rate of unemployment in the neighborhood of 6 or 7 percent; a dozen years ago it was 3.5 percent. Each upturn in the business cycle, meanwhile, has brought worse bouts of inflation. At the same time productivity improvements have steadily declined, from a yearly average of 3.2 percent between 1948 and 1965 to 2.4 percent between 1965 and 1973, to 1.8 percent between 1973 and 1978, with an actual decline in productivity since then. And, largely in consequence, increases in real after-tax pay of production workers in America (a group comprising over 80 percent of the workforce, which is almost entirely dependent on wage and salary income) began slowing between 1966 and 1975, reached a standstill around 1978, and have declined since then; by 1981, real pay levels were at their lowest since 1961.[5]

[5] S. Bowles, D. Gordon, T. Weisskopf, "A Continuous Series on Real Spendable Hourly Earnings," Technical Note, Economics Institute of the Center for Democratic Alternatives (1982).

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Viewed in this long-term perspective, several other industrial nations have fared better than the United States, particularly in maintaining productivity growth, keeping a lid on unemployment, and enhancing their citizens' real incomes. In the recession just ended, the United States suffered more severe plunges in productivity and output (in 1982, –1 percent and –8.8 percent, respectively) than Japan (1 percent and .3 percent), West Germany (1.7 percent and –2.7 percent), France (6.9 percent, –.1 percent), Italy (1.3 percent, –1.8 percent), and even Great Britain (3.4 percent, –.8 percent). I have treated longer-term comparisons at length elsewhere.[6] To be sure, the United States did create some 22 million new jobs during the 1970s, while several Western European nations did just the opposite—ridding themselves of "guest" workers. But the vast majority of the jobs created in America were very low paying, in service sectors of the economy sheltered from international trade; and the "guest" workers of our trading partners comprised a very small percentage of the work forces from which they were disinvited.

Some view all of the recent United States economic history as a kind of "molting" of the industrial base, as it moves out of heavy industries and into high technologies and services. They ignore several facts. First, high technology, standing alone, promises to generate relatively few new jobs, and many of those that it does create are rapidly shifting to nations with far lower wage rates (witness Atari's recent farewell to America). Only as high technologies are embedded within the products and processes of our older industries —thereby rendering them more competitive internationally—can we expect to generate more jobs with higher real incomes. And for some industries this needed restructuring is likely to be so costly, over so many years, that neither private lenders nor private investors can be expected to foot the bill entirely on their own.

They also ignore the telling fact that we are losing the international "race" in many key technologies. While exports of our ten most research-intensive product groups grew from 29 percent of total U.S. exports in 1974 to 32 percent in 1981, imports of these same products grew more precipitously, from 13 percent to 19 percent of total imports over the same interval.[7] Even before the dollar became overvalued, the United States already was losing world

[6] See Robert B. Reich, *The Next American Frontier* (New York: Times Books, 1983), chapter 1; and Ira C. Magaziner and Robert B. Reich, *Minding America's Business* (New York: Harcourt Brace Jovanovich, 1982), chapters 1-4.
[7] United States Department of Commerce, *Business America* (October 18, 1982).

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market share in a broad array of high technologies: in computers and office machines, from 38.4 percent in 1970 to 28.4 percent in 1980; semiconductors, 39.5 percent to 22.7 percent; aircraft, 67.3 percent to 53 percent; scientific, medical, and controlling equipment, 32 percent to 29 percent; and so on.[8] We have lost ground most dramatically in the sophisticated, highest value-added segments of these industries, particularly in industrial technologies on which our future manufacturing base is likely to be dependent. And again, the start of this decline predated the current overvalued dollar: In semiconductor memory chips, the Japanese by 1979 had gained a major share of the market for 16K RAMs; they subsequently claimed most of the market for 64K RAMs, and appear to have taken the lead in the next generation, 256K RAMs. A similar story can be told about numerically-controlled machine tools (with both the West Germans and the Japanese dominating the United States and world markets), robots, industrial sensors, advanced fiber-optics, and composite new materials like fine ceramics and high-strength plastics.

The problem is not a failure of American inventiveness; we continue to innovate like mad. The problem is that we have failed fully to use our human and capital resources to transform these innovations into competitive commercial products. Commercialization of new invention requires a steady supply of "patient" capital and skilled workers. But our mounting unemployment, falling productivity, and underutilized industrial capacity have constrained the growth of both these resources.

Fiscal and monetary policies have not been the cause of our problems; they simply have not been capable of setting things right during these last dozen years of economic turbulence. Every other industrial nation also has endured contractions in recent years under the combined weight of oil shocks, the emergence of highly competitive, newly industrialized countries, and domestic regulatory and welfare burdens. That several of these nations have managed to ride out the storm more successfully than we have is attributable, at least in part, to their willingness to use all three legs of the stool—fiscal, monetary, *and* industrial policies. They have understood the value, during this period of global change, of an explicitly *strategic* industrial policy—one in which the inevitable choices embedded in tax, research and development, credit, trade,

[8] United States Department of Labor, *Trends in Technology Intensive Trade* (Washington, D.C.: 1980); Office of Economic Cooperation and Development, *Foreign Trade Series C* (Paris: 1981).

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government procurement, and antitrust rules are made with reference to the increasing productivity and competitiveness of their national economies, and the fuller utilization of their capital and labor during the transition. They have viewed industrial policy not as a substitute for sound fiscal and monetary policies, or for good management at the level of the individual firm, but as a necessary complement. Yes, they have made mistakes in their industrial policies, just as they (and we) have made mistakes in fashioning fiscal and monetary policies. But they have at least tried, as we have not, to bring industrial policies into line with national goals. That they have succeeded at all suggests that we should try as well.

The defense connection

At its base, industrial policy raises questions more political than economic. The fear is often expressed that any effort to render more coherent our industrial policy is doomed by the same special interests that have fashioned it in the first place. Indeed, it is feared that any more explicit recognition of U.S. industrial policy and centralization of its administration merely would encourage more special pleadings and politicize the economy to an even greater degree. A counter-hypothesis holds just the opposite: that the *only* way to transform our present industrial policy from a "do-it-yourself" hodge-podge—heavily weighted toward subsidizing service industries sheltered from international trade and maintaining aging segments of our older industries—into a form for positive economic change is by centralizing its administration and enhancing its visibility. Choices still would have to be made, of course, but at least they could then be informed by public debate and the participation of other industries, unions, and industry analysts. The experiences of other democratic industrial nations, and our own history, provide some evidence for both points of view, although I believe somewhat more evidence for the latter.

But it is imperative that we engage these political issues head on, rather than continue to bury them under ideological platitudes about the relative merits of "markets" or "planning." The United States already is moving at a rapid clip toward the institutionalization of a more centralized and strategic industrial policy, but is doing so with almost no public understanding of its main features or debate over its merits. The shift comes as an inevitable response to the long-term decline in American competitiveness in world markets, now growing more serious as the globalization of markets pro-

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ceeds apace. Of course, the present Republican administration, committed as it is to the "magic of the marketplace," does not refer to this shift as an "industrial policy." The term sounds too much like planning. But all the elements are coming to be there: enhanced government support for high technology, active government involvement in restructuring older industries, and a vast consolidation of government authority over both of these ends of the industrial spectrum.

United States industrial policy for high technologies increasingly is being planned and executed by the Pentagon. This is partly due to the current defense build-up. The Congressional Budget Office estimates that by 1984 federal research and development spending will have increased 13 percent in real terms over 1980 levels. Approximately 70 percent of this increase—amounting to some $32 billion—will be related to defense. Federal spending for basic research alone will rise to an expected $6.62 billion in current dollars; again, the bulk will be defense-related. In addition to these sums, some $88 billion will be spent in 1984 on procuring new weapons, many of which will incorporate the most sophisticated technologies.[9] At the same time, and largely because of this infusion of federal funds, several of the government's other industrial programs have been brought within the Pentagon's orbit. Management of the Space Shuttle, for example, is shifting from NASA to the Department of Defense.

The development of many advanced products and processes will be spurred by this infusion of federal defense dollars. Between 1982 and 1987, for example, defense spending for semiconductors is expected to increase by 18.3 percent, while commercial semiconductor purchases will increase by only 11.8 percent. A similarly divergent growth pattern is expected for computer sales (16.4 percent for defense, 11.8 percent for commercial purposes), engineering and scientific equipment sales (9 percent for defense, 5.6 percent for commercial purposes), and sales of communications technologies (11.6 percent for defense, 5.3 percent for commercial purposes).[10]

But the Pentagon's high-tech industrial policy is also being driven by a fear even more palpable than the Soviet threat. It is the fear that other nations, particularly the Japanese, are gaining a lead in

[9] Congressional Budget Office, internal memorandum (May 11, 1983).
[10] See George F. Brown, Jr., *Defense and the American Economy: An Analysis of the Reagan Administration's Programs* (Lexington MA: Data Resources, April 1982).

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new "strategic" technologies—incorporating innovations that will be critical to America's capacity to wage war in an era of advanced electronics. Lest this nation become dependent on another's high-tech mastery, therefore, the Department of Defense has launched an all-out effort to maintain leadership in these areas.

Under the Defense Advanced Research Projects Agency, several specific programs are now underway: a $500 million effort to accelerate the development of very-large-scale integrated circuits (the next generations of logic and memory chips), a $250 million per year research and development drive in advanced lasers, $40 million per year in fiber optics, and research programs in an array of related technologies, such as computer software and composite materials. In addition, the Reagan administration has announced with unusual fanfare the start of a five-year, $1 billion program designed to maintain America's lead in "super-computers"—capable of significantly faster computations than today's most advanced computers. On each of these projects groups of U.S. companies are working in tandem with several universities and government laboratories. At the same time the Central Intelligence Agency is undertaking major studies of the industrial policies of other nations, presumably in order to gain further insight into how and where "strategic" technologies are being targeted.

These "strategic" technologies are likely to be important to America's economic development if only because Japan has deemed them critical to its continued commercial success in the years ahead. All have been anointed "industries of the future" by Japan's notorious Ministry of International Trade and Industry (MITI), which is precisely why the Pentagon is concerned enough to want to speed their development here. Thus it is not without some irony that Japan's choices of high-tech "winners" are becoming our own, albeit through the back door of national security.

But if this emerging institutionalization of U.S. high-tech industrial policy resembles your vision of the role of MITI, you are mistaken. MITI does not intervene as directly in the Japanese economy as does the Department of Defense in the U.S., nor does the Japanese government directly finance nearly so great a percentage of industrial research and development. The Japanese do target certain emerging technologies, to be sure, but decisions about which ones deserve certain tax and credit treatment are arrived at consensually, through ongoing conversations among trading companies, industry groups, and government analysts. The Pentagon and CIA are not known to be models of decision-making by con-

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sensus. Most importantly, and most obviously, MITI is concerned about commercial competitiveness; the Pentagon seeks industrial competitiveness only to the extent that it undergirds the nation's defense capabilities.

A new (Republican) coherence?

At the other end of America's industrial spectrum, meanwhile, there is a similar trend. Industrial policy for declining industries increasingly is falling under the twin domains of the Office of the U.S. Special Trade Representative and the Commerce Department. If the Reagan administration has its way, both will be consolidated into a new cabinet-level Department of International Trade and Industry (DITI). It is difficult to know precisely how DITI will function, but already there are indications of a new industrial policy for declining industries, one that most likely will come to pass even if DITI does not.

To understand this policy, one must first note the potent protectionist forces that have been brought to bear on our political process as America's heavy industries have lost ground to international competition. The Reagan Administration, its free-market rhetoric notwithstanding, has been no less susceptible to these pressures than its predecessors. If anything, the pressures have increased, and the current Administration's record is in fact more protectionist than the last: We now have bilaterally-negotiated quotas against the importation of basic steel from Western Europe and automobiles from Japan, quotas on textile and apparel imports from South East Asia more stringent than at any time in recent history, and a ten-fold increase in tariffs on motorcycles from Japan. Even in the wake of the Williamsburg summit's call for a reduction in worldwide import barriers, the Reagan administration decided to increase tariffs and impose quotas on stainless steel imports.

The Reagan administration, anxious to develop politically acceptable alternatives to blunt protectionism, increasingly is negotiating with distressed industries. The "voluntary" quota against European steel was the product of such a negotiation with U.S. steel producers, who in return agreed to forego more onerous countervailing duties and penalties. As another example, the Harley Davidson Company (the single U.S.-owned manufacturer of motorcycles) agreed to a plan for upgrading its facilities in return for the administration's willingness to increase tariffs on imported motorcycles for a limited period of time. In one pending case the administra-

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tion is considering channeling tariff proceeds to the protected industry on condition that the industry use the proceeds to retool its aging plant and equipment and retrain its workers for higher value-added production. Another industry in distress has been promised export assistance and stepped-up government procurement for its willingness to forgo anti-dumping levies and countervailing duties on foreign imports.

The trend is clear. Protection will be granted only on condition that the industry seeking it devise a "workable plan" for restructuring itself in a more competitive mold. The terms of such plans will be negotiated between the industry or firm and government officials. And the administration will seek to buy off the petitioning industry with assistance other than outright protection—subsidized loans, research grants, tax breaks, export financing. A new DITI, combining all major international trade programs under one roof, will make it administratively easier to negotiate such restructuring plans and to deliver such packages of assistance in return. Industry specialists from what formerly had been the Commerce Department's Bureau of Industry Analysis can review the feasibility of restructuring plans and monitor their execution; assistance programs from anywhere within the newly-consolidated Department, and even some without, can be targeted (perish the word) to the industries in need.

The drift toward a more coherent industrial policy for both high technologies and declining industries is not the result of any grand plan on the part of the Reagan administration. (Indeed, members of the administration may be aghast to see in these pages the pattern that is emerging.) Rather, the gradual institutionalization and management of industrial policy is the consequence of increasingly intense international competition, as mediated through our domestic politics. Another administration, less avowedly wedded to free market principles, would find itself drifting precisely in the same direction. Instead of the Pentagon and DITI as the institutional centers of its industrial policy, the Democratic alternative might feature a hierarchy of "tripartite" boards comprised of the elites of organized labor, big business, and finance. But in all likelihood the boards would find themselves following Japan's lead in selecting high technologies for special treatment, and simultaneously would be negotiating with distressed industries about the means necessary to restructure them toward more competitive production. If the current administration is drifting toward a strategic industrial policy more speedily than a Democratic administration might be ex-

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pected to move, that probably is because this administration has less ideological terrain to its right with which to contend. A coherent industrial policy may be politically easier for Republicans than for Democrats to attain, just as was President Nixon's historic overture to Peking.

All of this suggests that the central question with which we must deal, and deal soon, concerns not the economic wisdom of industrial policy but its political form. The mounting pressures of international competition inevitably are reshaping our governing institutions—consolidating authority over the economy, and forcing a closer strategic link between business and government. This reshaping transcends ideological and political lines. At the same time, as America's industrial base dramatically transforms itself with government's help, the stakes for both winners and losers will grow significantly larger. Thus the process by which industrial policy is formulated raises anew one of the most perplexing issues of political legitimacy. How can we insulate it from the predations of narrow interest groups and the vagaries of partisan politics while ensuring that it is democratically accountable? Republican or Democrat, liberal or conservative, that question will continue to be with us.

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The charmed life of Head Start

PETER SKERRY

On the occasion of its fifteenth anniversary in March 1980, Head Start was declared by President Jimmy Carter to be one of those rarities—"a program that works." And on this one point, at least, few would seem to disagree with him. Even the Reagan administration has looked kindly on Head Start, including it in the social "safety net" exempted from budget cuts. And as the Urban Institute's Changing Domestic Priorities Project points out, Head Start is unique among social service programs in that under the present administration it has actually enjoyed increasing appropriations. Indeed, for fiscal 1984 the President has proposed a Head Start budget of $1.05 billion, a substantial increase over the $912 million allocated for the previous year.

This reprieve from the Reagan cuts is merely the latest in a series of challenges that Head Start has weathered admirably. From its inception Head Start has had a somewhat charmed existence. It began as the brainchild of Office of Economic Opportunity (OEO) Director Sargent Shriver, who in December 1964 envisioned a summer enrichment program for 25,000 children at a cost of about $10 million. Six months later Head Start was serving over 500,000 children at a cost of $96 million. As part of the Community Action Program, Head Start channelled federal funds directly to local community groups and, as a result, was soon

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under attack from local officials, especially in the South, who correctly perceived the program as a threat to their power. Head Start survived these challenges without great difficulty, only to be humiliated in 1969 by the famous Westinghouse study, which reported that the promised IQ gains of Head Start graduates were non-existent or merely temporary.[1] Still, the program struggled along, in no small measure because the newly-arrived Nixon administration looked upon it kindly, as part of a broad child-care initiative tied to its ill-fated welfare reform. Thus, as the Nixon administration began dismantling OEO, Head Start's supporters got their way: They kept the program out of the Office of Education and secured it a niche in the newly-created Office of Child Development at HEW. And during the Carter administration these same people again succeeded in preserving what in their view are the program's unique mission and identity, this time by keeping Head Start out of the new Department of Education.

One reason Head Start has thus endured is that it has managed to be many things to many constituencies. To some, it is a federal compensatory education program—though, as we have just seen, it has never been administered by the federal education bureaucracy. To others, it is a provider of medical and dental services to poor children—though it also provides jobs to many of their parents. To still others, it is a catalyst for community change—though it prides itself on the hot meals served to its charges each day. Head Start's protean nature has meant, for example, that when the program has come under attack for failing to produce higher IQ scores, supporters have justifiably pointed to its many other successes. And though it has never lived up to the grandiose claims of its originators, Head Start has been able to deliver something to just about everyone.

But one result of the program's multi-faceted character is that few have bothered to examine Head Start as a coherent whole. To be sure, it has been studied and evaluated by platoons of contract researchers scrutinizing this or that individual "program component," usually to fend off a specific criticism or to placate some constituency. But after millions of federal dollars spent on literally hundreds of Head Start studies, there is, to my knowledge, only one participant-observer study by a disinterested academic researcher—Carole Joffe, who went out and merely watched the

[1] Westinghouse Learning Corporation, Ohio University, *The Impact of Head Start* (Washington, D.C.: Clearinghouse for Federal Scientific and Technical Information, 1969).

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day-to-day activities of a Head Start center to see how the various parts combine to make such a successful whole. And as it turns out, Joffe's fine piece of research, *Friendly Intruders*, is actually not about Head Start but a preschool program similar to it operated by the state of California.[2] Thus, we have a unique program that works, or so everyone seems to agree. Yet no one has bothered to examine how or why it works.

The political forces underlying this lack of curiosity about Head Start are not difficult to fathom. Liberals have focused on the administration of what has been seen as one of their programs. Especially since the crisis brought on by the Westinghouse report, they have been preoccupied with tightening up Head Start management. From this rather technocratic perspective, liberals have not been inclined to probe for the secrets of Head Start's success. And when pressed to do so, they routinely offer up a shopping list of the various program components.

Conservatives have had a tougher time of it. Federally sponsored child care is after all not an issue to gain favor with Moral Majoritarians or supply-siders. Yet even the most zealous critics of big government have recognized the political cost of taking on this particular program. As a result, the Reagan administration has supported Head Start, but with little enthusiasm. Indeed, it has done so with its eyes shut, not wanting to look too closely at what it has come to embrace.

The irony is that if administration conservatives were to examine Head Start more carefully, they would find that this most popular survivor of the war on poverty actually demonstrates the validity of their concerns with self-help, individual sacrifice, and private initiative. Yet it is also true that Head Start's very existence demonstrates that these, as well as other, conservative goals can sometimes coexist with—even be fostered by—government programs. For Head Start sits astride an intellectual divide, contradicting much liberal and conservative social policy dogma. As a result, the program has much more to teach liberals and conservatives alike than either has recognized.

The liberal view

In 1982, 396,000 poor children were served in Head Start centers scattered over the federal domain from Maine to Samoa, from

[2] Carole E. Joffe, *Friendly Intruders* (Berkeley: University of California Press, 1977).

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Alaska to Puerto Rico. Like other federal programs begun in the 1960s, this far-flung network is administered from Washington, with funds going directly to local grantees who operate their own Head Start programs or delegate part or all of the task to other agencies. True to the program's origins as a community action effort of the Office of Economic Opportunity, about 65 percent of Head Start centers today operate under the auspices of community action agencies. Another 10 percent are operated by local public school boards, and the remainder by a variety of non-profit organizations.

However multi-faceted it may be, Head Start is above all a compensatory education program. At its inception it was heavily influenced by the developmental psychologists who were then challenging long-held views about the fixed nature of intelligence. Yale psychologist Edward Zigler, one of the program's founding fathers, describes the thinking in those early days of Head Start:

> In reaction to the Gesellians and other proponents of fixed IQ, J. McV. Hunt, Benjamin Bloom, and others constructed for us a theoretical view that conceptualized the young child as possessing an almost unlimited degree of plasticity. Joe Hunt continued to assert that the norm of reaction for intelligence was 70 IQ points . . . and that relatively short-term intervention efforts could result in IQ gains of 49 or 63 points. With such environmental sugarplums dancing in our heads, we actually thought we could compensate for the effects of several years of impoverishment as well as inoculate the child against the future ravages of such impoverishment, all by providing a six- or eight-week summer Head Start experience.

The actual results, of course, have been far less impressive. In 1969 the Westinghouse study reported that no such dramatic gains were produced by summer—or even full-year—Head Start programs. Subsequent research then seriously challenged the Westinghouse methodology, but these studies produced disappointing findings of their own. For while Head Start graduates scored higher on intelligence and achievement tests than their non-Head Start peers, these gains faded as the graduates advanced through the primary grades. Then, in the late 1970s, Head Start supporters pointed to the work of the Consortium for Longitudinal Studies, whose preschools produced long-lasting cognitive and non-cognitive gains in children from low-income families. But as others have noted, these are the results of various small-scale, university-based experimental programs that are administered with the utmost care. Whether such results could be replicated on a national scale for 400,000 children is problematic. Still, very recent studies of Head Start itself indicate that over time the program

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has grown more effective at increasing cognitive outcomes. But, again, how enduring these gains are remains unclear.

Faced with these positive but far from overwhelming results, Head Start supporters turn typically to the program's many other features—as contributions toward compensatory education, or as achievements in their own right. They point to the educational and nutritional benefits of the snacks and hot meals all students are served daily. Or they cite the finding of a recent national survey that 80 percent of Head Start parents said the program made arrangements for medical and dental services for their children, and that in 90 percent of such cases Head Start helped pay for the services. Also, in recent years virtually all Head Start students have been inoculated against measles, diphtheria, and polio.

In a different vein, supporters frequently mention the emphasis on employing parents at Head Start centers. Indeed, program regulations require that parents be given preference when nonprofessional staff positions are filled. As a result, parents of past or present enrollees comprise about 29 percent of all paid employees—typically cooks, janitors, or paraprofessional aides. This is a record unique among federal programs.

Most centers also offer informal training to parent volunteers in the health, nutrition, and education fields, allowing them to move into paid positions. Taking advantage of Head Start's certification program, employees have been able to take college courses and eventually to obtain credentials as child-care workers. And while enthusiasts acknowledge that the total number of employees who have negotiated this path of upward mobility is not enormous —perhaps several thousand since the effort began—this is one more of the program's many minor successes.

Parent participation

Employment and training opportunities are part of the broad emphasis on parent participation throughout Head Start, a primary objective of the program since its inception. In part, this can be traced to the concept of community action that motivated many of Head Start's original planners: Parents, mobilized by their involvement in Head Start, were to be the agents of wider community change. Yet parent participation can also be traced to the developmental psychologists and medical men among the program's founders, who felt that the only way to help poor children was to educate their parents as well.

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Today, as program enthusiasts eagerly point out, its thoroughgoing emphasis on parent participation makes Head Start unique among federal programs. Regulations mandate parent participation at all levels—local, regional, and national—of the program's policy-making machinery, and at each center parents sit on one or more policy committees. Yet they are most in evidence as volunteers assisting teachers and other staff. A homely fact, which nevertheless reveals how Head Start adapts to particular settings, is that eight out of ten local programs report using ethnic menu ideas suggested by parents.

As Head Start supporters observe, center administrators are expected to rely on parent volunteers, since federal funds are intended to cover only 80 percent of costs, with the balance to be in-kind contributions from parents and community groups. Center administrators, therefore, spend a good deal of time—clearly more than they would like—getting parents involved in Head Start activities. And the results are generally held to be successful. For example, the National Head Start Parent Involvement Study found that in three-fourths of the local programs parents volunteer as teacher aides. And 90 percent of local programs reported parent participation in the setting of policy.

Obviously, these figures do not tell us the precise number of parents actually participating in the program. For, as skeptical observers note, parent participation can be mandated by regulations, but not compelled. Thus, a recent study of Head Start conducted by Abt Associates reports that in 1977, the program served 334,000 children and used the services of 95,000 parent volunteers. The study also reports that only one-fourth of all parents say they help at their child's center at least twice a month. And the National Parent Involvement Study found that in the average center, for every 11 children, less than one parent volunteers regularly as a classroom aide one day a week.

To these findings Head Start's many friends reply—with considerable justification—that however far from optimal, parent participation in the program is much greater than in any comparable efforts. For example, though hard evidence is lacking, Head Start is generally thought to be much more successful in involving parents than child care programs, whose primary clientele consists of working mothers with even less time to get involved than those who remain at home (as do more than half of Head Start mothers). Title I of the Elementary and Secondary Education Act is another case in point. Parent participation was not originally

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mandated in the program. Now it is, but studies such as the National Institute of Education's Title I Evaluation show that parents are restricted to an ill-defined advisory capacity. Finally, Head Start contrasts most sharply with the public schools, where parent participation has never been enthusiastically endorsed. And to whatever extent it may have been evident in the past, parent participation in the schools has in recent years been further reduced by judicial interventions, teacher unionization, and a general—and not unrelated—tendency toward bureaucratization. This is undoubtedly the reason that studies comparing the performance of Head Start programs operated by community action agencies and those run by public school districts reveal that the former are more effective in promoting parent participation.

The fact is, there has emerged in Head Start a pervasive "norm of participation" apparent to anyone who has ever set foot in a center. Whether by regulation or by an emerging tradition, professionals who work in Head Start have come to expect that at least some parents will be involved. One mother from Alabama puts her finger on the parents' perception of this expectation of involvement:

> The first thing I heard about Head Start was "it's a day care center. They pick up your child, bring it to school and bring it back. You have the day free to do what you want to. You run around; you go visit; or stay home and watch television. You've got a free day, from Monday to Friday; you are free from the time the bus picks them up at 8:00 till it brings them home at 2:30 . . . you've got a free day." But that's not what Head Start is. Head Start is a program that, if your child is in, it wants you involved as well as the child. . . . There is always something for a parent to do at the center. They can always keep a parent involved.

Head Start as a community institution

The comparison between Head Start and the public schools is indeed telling. For as more and more demands have been placed on them, the schools have grown increasingly rigid and bureaucratic, while Head Start centers have remained remarkably flexible and non-bureaucratic. In part, this is a question of scale. Most centers are small, with an average enrollment of only 56 children, divided in most cases between morning and afternoon sessions. But Head Start's flexibility is also a reflection of the program's administrative structure. Within each center there is a minimum of hierarchy. The administration consists of a supervisor and, not

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infrequently, an "education specialist" in charge of the educational program. Lines of communication between the supervisor and the staff—teachers, teacher aides, cooks, janitors—are simple and direct. For the most part there are no unions intervening between supervisor and staff. Center policy is nominally set by the parents' committee, to whom the supervisor is directly responsible. In practice, the supervisor sets and administers his own policies, but because a successful program requires the enthusiastic cooperation of parent volunteers and because demands on staff are great relative to their salaries, supervisors consult frequently with everyone in order to maintain an atmosphere of collegiality.

Given the informal tone of the typical center, it is not surprising that, as studies reveal, centers routinely provide numerous services not required by regulations. These include transportation for parents and children to dental and medical appointments, babysitting for siblings of Head Start students, and referrals to social service agencies. In her study of California's version of Head Start, Carole Joffe refers to the center's "underlife," in which professional staff, as well as their spouses, routinely provide parents with informal services such as legal advice, career counseling, and psychiatric therapy. Joffe cites one instance in which a distressed mother and her two children actually moved in with a teacher. As Joffe concludes:

> The "underlife" is one of the most unique and integrative aspects of the Parent-nursery program. Such a system probably goes far toward explaining why so many of the parents involved . . . become so deeply attached to these institutions . . . .

As Head Start advocates point out, the program functions as a network of multi-purpose community centers, providing a range of educational, medical, and social services. On a more mundane level, centers offer respite to parents, especially very young mothers, who feel isolated with their youngsters in cramped apartments. Many centers have "parents' rooms" where mothers can get together over coffee once they have left their children with teachers. And in an effort to get them interested in the program, many centers run special outings and activities exclusively for parents. In fact, the typical center spends up to 15 percent of its budget on such parent activities. In the larger scheme these concerns may seem trivial, but clearly the opportunity to get out and meet other parents is one more feature of Head Start that has helped it put down roots in neighborhoods across the nation.

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Liberal blindspots

These are the features of Head Start most frequently mentioned by its many admirers. But, as I have suggested, there are other aspects of the program that its liberal champions deemphasize or overlook completely.

For example, while one hears much about Head Start's diversity and adeptness at meeting locally-defined needs, it takes a bit of probing to learn that this is achieved through extremely loose administration. This has been a problem since Head Start's early days when, in the commotion of mounting a large national effort on such short notice, grantees received little or no guidance from Washington as to how to use their resources. Attention began to focus on this in the wake of the Westinghouse study, and by 1975 Head Start Performance Standards were promulgated. These set uniform national goals with regard to health, nutrition, cognitive skills, social and emotional development, and parent participation. Yet under these guidelines, grantees have continued to establish and evaluate their own objectives. Typical of Head Start administration is that there is no standardized Head Start curriculum; each center must develop and implement its own. To be sure, efforts in this and other program areas are monitored by regional bureaus, but these primarily rely on information provided by the grantees themselves. As the recent Abt Associates study of Head Start concludes:

> On a national level, Head Start is not a program; that is, the broad goals set forth in the performance standards do not constitute a program in the sense of a uniform set of experiences.

In response to this situation a blue-ribbon panel, convened by the Carter administration to mark the fifteenth anniversary of Head Start, has called for more administrators to monitor grantees. Headed by Professor Edward Zigler, the panel notes that at the regional level in particular, staff members are so overworked that they barely have the opportunity to visit each local program annually. No doubt more personnel would alleviate the burden, but the panel's objective—tightened administration—seems certain to conflict with Head Start's vaguely-defined goals and its tradition of local autonomy. It is simply not evident how more regional administrators will change these basic features of the program. Nor does the Zigler panel consider whether tighter administration, even if achievable, would undermine Head Start's unique flexibility and diversity.

Another feature of Head Start that gets surprisingly little at-

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tention from its advocates is the program's relatively low cost. If all governmental expenditures—local, state, and federal—are considered, Head Start costs less than child care provided under the Social Security Act's Title XX, the federal government's largest child care program. According to figures compiled by the Congressional Budget Office, in 1977 total governmental expenditures for Head Start amounted to $1,283 per child, compared to $1,349 per child for Title XX. And compared to public education, Head Start seems an even bigger bargain. In 1977 the average per pupil expenditure for elementary and secondary schools nationally was about $2,000.

Perhaps Head Start supporters have not emphasized the program's low cost because it raises the issue of the low educational and salary levels of Head Start staff. The typical Head Start teacher does not have a bachelor's degree, and teacher aides, presumably, have even less education. This explains why so many parents and community people have been able to carve out a niche for themselves in Head Start centers across the nation. But it also explains why, in 1981, the average starting salary for a Head Start teacher was about $7,200 per year, compared to the average starting figure for public school teachers of about $12,000 per year. And if veteran Head Start teachers are compared to veteran school teachers, the disparity is even greater. If total hours worked are taken into consideration, Head Start teachers may not do so badly relative to school teachers. But the fact remains that Head Start is simply not a program staffed by highly-trained, highly-paid teachers.

A much more delicate issue for Head Start partisans comes from the program's intellectual origins in the theories of cultural deprivation so prevalent in the mid-1960s. Like other efforts of that period, Head Start is built around the assumption that, on their own, the poor are incapable of helping their children escape from poverty. Indeed, it is assumed that poor parents actually hinder the mobility of their offspring. Such views, implicit in the very name "Head Start," are hardly popular among liberals today. What made them palatable in the 1960s was a naive faith in the plasticity of human nature and in the ability of professionals to intervene successfully to alter the environment of the poor. But as these views have hit up against obdurate reality, cultural deprivation theory has become a liability to liberals. Yet it remains part of the fabric of Head Start today. Amid the changing fashions of social science, Head Start persists in helping poor

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parents and children overcome the deficiencies of their background. For liberals in 1983 this is not a comfortable legacy.

Another aspect of Head Start bound to make its liberal supporters uneasy, if they stop to ponder it, is the program's focus on low-income families. Program regulations say that "at least ninety percent of the children enrolled in Headstart programs must come from families receiving public assistance or whose incomes are below the official poverty line established by the Office of Management and Budget." But this requirement flies in the face of one of the basic tenets of liberal social policy, captured in the slogan, "Programs for poor people are poor programs."

The logic here is certainly plausible: Government programs directed exclusively at the poor inevitably provide inferior services, because the recipients lack the resources and skills necessary to secure their fair share. Equally plausible is the liberal solution to this problem: universal public services, which tie the fate of the poor to the rest of society. But however credible on their face, these propositions fail to come to terms with Head Start's many successes. For despite its low-income clientele and its emphasis on their cultural deficiencies, Head Start has avoided any stigma as a dumping ground for poor children. Indeed, the Abt study and another by the General Accounting Office indicate quite the opposite—that perhaps as many as 25 to 30 percent of Head Start families have incomes above the poverty line. And of these, a significant number exceed this eligibility limit not by a few hundred dollars, but by a few thousand. Given the well-documented hostility of marginal working-class families to social welfare programs in general, and to government child care in particular, the image of such parents maneuvering to get their children into Head Start is striking.

But perhaps the single most sensitive matter Head Start advocates have yet to confront is the racial and ethnic composition of the program's clientele. Today, as has been more or less true for the last fifteen years, slightly more than half of Head Start students are black; about 15 percent are Hispanic; about 25 percent are white; and the remainder are from other minorities. The percentage of black and Hispanic children in the program is about double their proportion of the poverty-level population, while that of white children is about half their proportion of the poverty-level population. Thus, as the Abt study concludes, only 35 percent of all Head Start centers are integrated—defined as enrolling between 21 and 80 percent of any ethnic group.

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At regional levels Head Start's ethnic make-up is even more homogeneous. In the northeast and southeast, about 40 percent of all centers have student populations more than 80 percent black. And in cities of the northeast and small towns of the southeast, about 55 percent of the centers have such high concentrations of black pupils. For Hispanics the figures are not as dramatic, but nevertheless worth noting. In the southwest, about 30 percent of Head Start centers have student populations more than 80 percent Hispanic, while about half the centers in urban areas there have as high a concentration of Hispanics.

The racial and ethnic composition of Head Start staff parallels the student pattern somewhat, though Hispanics are much less in evidence. About 44 percent of personnel are white, while about 47 percent are black. Nationally, then, white and black staff members are found in roughly equal proportions; and this is true at all levels of responsibility within centers—from supervisors to teachers to aides. Yet at regional levels this pattern breaks down. This is especially true in the southeast, where the overwhelming majority of teachers and aides is black, particularly in the small towns and rural areas there. And to a lesser but still marked degree, this high concentration of black staff is found in the cities of the west and southwest.

As we will explore shortly, there are many factors contributing to the predominance of blacks—children and adults—in Head Start centers across the nation. But whatever these factors may be, racial concentration is not an issue that has received much attention from Head Start advocates. This is curious, for by the standards liberals routinely apply to other institutions, Head Start is without a doubt "segregated."

Self-sufficiency, jeopardy, frugality

It is not surprising that Head Start's liberal friends have shied away from these embarrassing aspects of the program. But it is surprising that conservatives have not seized on the same features, which lend considerable support to their own views on social policy. Take, for example, Head Start's administrative structure: It leaves the attainment of diverse goals, ambiguously defined at the national level, up to local administrators who have the de facto authority to focus on those most compatible with local needs and capabilities. Troublesome to Head Start advocates because it belies the liberal faith in centralized government, this loose ad-

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ministrative arrangement is entirely consistent with the Reagan administration's New Federalism initiative.

Of course, many would argue that Reagan's New Federalism is merely an excuse for cutting the federal budget. However true this may be, the New Federalism also speaks to legitimate concerns that federal funding undermines local initiative and self-reliance. Sophisticated conservatives also fear that federal funding weakens the cohesion of groups of individuals tied together by social bonds of mutuality and interdependence. In either case, the conservative preoccupation is with the growth of a paternalist state that saps the vitality of all it touches.

But as must now be evident, Head Start is one government program for the poor that ought not to arouse such conservative anxieties. A casual visit to the nearest center confirms that Head Start can hardly be said to be lavishly funded. The typical Head Start center, housed in the basement of a church or a housing project, or in spare rooms rented from some social agency, has an improvised quality. The furniture may be second-hand, or classroom materials donated. Most centers could not be further from the impersonal or the institutional, much less the slickly professional. They look and feel like part of the neighborhoods they serve. And like their neighbors, Head Start centers seem to be, if not in peril, then certainly struggling to get along.

Center supervisors are provided minimal resources to achieve a range of diverse, often contradictory goals. For example, how does one maximize parent participation in the classroom while maintaining a strong educational program for the children? Or how does one satisfy eager parents who want their youngsters to begin reading and ciphering, and cautious teachers who are primarily concerned with their students' social and emotional development? To answer such questions each Head Start supervisor must rely on his or her ingenuity. Thus, it is the supervisor's responsibility to find transportation to local clinics; to connect with schools that have facilities his teachers need; and to recruit parent volunteers to help overburdened staff.

This catch-as-catch-can feature of local programs makes Head Start an administrative nightmare. But it also contributes to its enduring success. At least this is the conclusion to be drawn from the work of Professor Donald Erickson of the University of San Francisco, currently engaged in a study of the effects of public funding on private schools in Canada. Professor Erickson reports that a crucial factor in the success of many private schools is what

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he calls "institutional jeopardy." He makes the rather commonsensical point that teachers in schools struggling to survive derive great satisfaction from their work, because the contributions they make are clearly needed. Indeed, Erickson argues, schools experiencing jeopardy elicit significantly greater commitments and sacrifices from teachers than schools more securely established. He also notes that public schools, relying as they do on tax support and compulsory attendance laws, are substantially less in jeopardy than most private schools, Erickson argues that precisely because public schools ultimately rely on the coercive powers of the state, any weaknesses or failures resulting in extraordinary demands are resented by teachers and parents alike, who as taxpayers feel cheated. As a result, public schools that experience jeopardy are in real trouble. So, too, may be private schools that come to rely on public funds.

From this perspective, Head Start's unique qualities come readily into view. For here is a public education program that does not rely on compulsory education laws. More important, its reliance on public funds is not so complete that those involved forget that success depends on the enthusiastic cooperation of both staff and parents. Erickson's research certainly helps explain how Head Start has been able to accomplish so much with so little. For it seems likely that the need to pull together elicits considerable effort and commitment from poorly-educated and low-paid staff members. At least it is evident to anyone who has ever visited a center that Head Start enjoys high staff morale. This is confirmed by a reported attrition rate among Head Start teachers of about 20 percent annually, which is quite comparable to rates among better-situated public school teachers. Among first- and second-year school teachers, for example, the attrition rate is 15 percent nationally. And though the data are unavailable, this figure would undoubtedly be much higher among inner-city teachers, a more apt comparison group for our purposes. By these lights, then, Head Start is doing an impressive job with its limited resources.

Of course, many feel committed to the program simply because working at Head Start is not a bad job. To many poorly-educated individuals, Head Start offers the chance to earn a modest salary in a loosely-structured, professional setting—employment that is highly respectable and no doubt personally rewarding. It should not be a surprise that given the choice between working at Head Start and working at McDonald's or at a hospital laundry, many would choose Head Start.

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Professor Erickson makes another point about institutional jeopardy: Its effects are contagious. The extra efforts of teachers tend to inspire students, as well as parents, whose commitment then reinforces the teachers' sense that they are needed and appreciated. This dynamic also seems to be at work in Head Start. At least it is evident that teachers are not the only ones who are committed.

This points to another feature of Head Start that has been lost on conservatives and liberals alike. As mentioned earlier, a "norm of participation" has taken hold in Head Start. Though the vast majority of parents do not participate directly in the program, it is generally thought that they ought to. But the implications of this ethos transcend the notions of community control and participatory democracy that Head Start's planners originally had in mind. For what liberals see as participation may be viewed by conservatives as self-help, particularly in light of the program's emphasis on employing parents whenever possible. This distinguishes Head Start from social programs that have become stigmatized as welfare giveaways. And this congruence with the widely shared belief in self-sufficiency earns Head Start legitimacy in the eyes of taxpayers, administrators, and, most important, the participants themselves.

Head Start also avoids the welfare stigma by focusing on the needs of children. For as a program directed at disadvantaged youngsters, whose problems are not of their own making, Head Start raises no fears of fostering dependency in able-bodied adults. Head Start has also gained legitimacy with its emphasis on education. As the name "Head Start" suggests, the motivating idea is to help disadvantaged children begin the educational competition with fewer burdens. This focus on making the competition more equitable resonates with the fundamental American faith in self-advancement through education. This aspect of the program is what Gilbert Steiner seems to have in mind when he writes of Head Start's beginnings:

> . . . it had a commonsense appeal to many persons who were indifferent to parent education, community action, and cognitive development: if some children in the United States were so deprived that they did not know such basic things as colors, a program that seemed quickly to wipe out those deficits was obviously a sensible effort.

Today this commonsense appeal endures. In an era of affirmative-action quotas and equality of results, Head Start's efforts to improve equality of educational opportunity are remarkably noncontroversial—almost quaint.

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Finally, it should be noted that Head Start's self-help ethic allows the program to overcome the burden of cultural deprivation theory that liberals today find so objectionable. As mentioned earlier, the program has been freighted from its inception with the assumption that the poor are unable to help themselves. But as must by now be evident, Head Start does not wallow in fatalism. Rather, it assumes that impoverished parents are not completely helpless and that, after all, many merely want for opportunities to prove themselves. And Head Start provides parents such opportunities on a variety of levels—as casual observers, volunteers, and even employees.

Head Start and the black community

As already indicated, the racial imbalance among students and staff is a source of embarrassment to Head Start advocates. While they focus on Head Start as a community institution, it might be more accurately described as a black community institution. For in many instances, especially in the rural towns of the southeast and the cities of the northeast, Head Start centers are run almost totally by and for blacks.

The special relationship between black Americans and Head Start has many roots. One leads back to the heady days of the Community Action Program. In the 1960s Head Start helped to mobilize Southern blacks bowed under the heel of white supremacists. Similarly, in the northern cities Head Start was one of many vehicles for the organization of black communities. While this aspect of the program is much less evident today, Head Start still provides an institutional base, however modest, that helps sustain emerging black leadership.

Another important factor is the high premium black parents have long placed on education. As sociologist Sara Lawrence Lightfoot puts it: "when the parents of black children are questioned about their attitudes toward schooling and their ambitions for their children, education is not only valued, but formalized schooling is often seen as the panacea." Indeed, these attitudes have translated in recent years to unprecedented increases in the educational attainment of young blacks. And as observers of preschool programs such as Carole Joffe consistently report, tensions typically arise between black parents, who frequently demand instruction in basic math and reading for their youngsters, and teachers (black or white) who have been trained in the tradi-

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tional, play-oriented approach to early childhood education. No doubt such expectations on the part of black parents help explain why Abt Associates reports that in the southeastern region black Head Start students score cognitive gains, while their white counterparts do not.

Yet Head Start also seems to address deeper and more complex needs of black Americans. Long excluded from the mainstream, blacks have demanded open and equal access to all parts of American society. Appealing to universalist principles has obviously been a primary concern of black leaders, but it has not been the only one. Nearly as insistent has been an emphasis on the unique history of blacks as the one group that did not choose to come to America. The result has been the persistent feeling that American society owes blacks a special debt, yet to be repaid. In the 1960s militants carried this sentiment to its logical extreme by calling for "reparations from white America." Today the persistence of these attitudes is evident in black leaders' demands for affirmative action quotas.

The tension between demands for equal treatment and demands for special treatment is troublesome, but it need not be fatal. For at various times American society has been able to respond successfully to these contradictory impulses with large-scale government programs aimed primarily, but not exclusively, at black Americans. On the whole, such efforts have been acceptable to white Americans, who have seen them as promoting equal opportunity. And they have been acceptable to black leaders, who have been able to construe such programs—unlike the haphazard philanthropy of individuals—as sustained commitments by the entire society to the unique needs and aspirations of blacks.

Yet such government programs are not always successful. Precisely because they are committed to universalist values, they can only go so far in addressing the special needs of blacks. Many black leaders have learned, through disappointing experience, the truism that neo-Marxists never tire of bringing up: Social welfare programs are fundamentally instruments of social control. Not surprisingly, programs intended to help blacks are frequently administered by whites. The inevitable frustrations of bureaucracy exacerbate the sense among many blacks, especially the elites, that instead of being dealt with straightforwardly they are being ministered unto. For some, disappointment leads to more zealous efforts in behalf of universalism. For others, it leads to a complete rejection of universalist values and a call for community control or separatism.

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In either case, good intentions frequently lead to bad feelings: Blacks see whites as hypocritical and whites see blacks as ungrateful.

The genius of Head Start is that for almost twenty years it has managed to navigate its way through these cross-currents of American race politics. Head Start is formally a government program open to all, but more often than not, it functions informally as a black community institution run by and for blacks. Head Start is a public program committed to widely shared values of equal educational opportunity, but it speaks in particular to the intense aspirations of black parents for their children. Yet all of this is without a trace of separatist rhetoric.

And yet, it is worth emphasizing, if Head Start succeeds as a *black* community institution, it is because it is a black *community institution*. After all, it is not difficult to think of institutions run by and for blacks that are not very successful. The public schools of Washington, D.C. come readily to mind.

We have already mentioned some of the features that help to root Head Start in local communities. Important among these are the small size and non-bureaucratic atmosphere of Head Start centers. Another factor is that centers primarily serve children from the local neighborhood, just as the much-maligned neighborhood school used to. Still another consideration is Head Start's strong sense of purpose and mission. As the federal government's first venture into the uncharted realm of early childhood education, Head Start was quickly able to carve itself a secure and unchallenged place in the Washington bureaucracy. And the program's sharply-defined identify at the top has been reinforced by its physical presence at the local level. For in neighborhoods around the country, residents can readily point to the nearest Head Start center. To them, Head Start is not just another federal program, but a place around the corner where young kids go to get their teeth fixed and learn the alphabet. This may seem a trivial consideration, but Head Start's tangible presence to ordinary citizens is a quality many federal programs lack.

Haven in a bureaucratic world

In this regard, Head Start once again compares favorably with Title I of the Elementary and Secondary Education Act. Created by Congress to provide remedial services to the educationally disadvantaged, Title I has since 1965 been pumping billions of fed-

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eral dollars into local school districts. Not surprisingly, controversies have arisen over whether these funds have been spent as Congress intended. In some cases, for example, Title I moneys have been used to provide unnecessary educational frills for ineligible students or to replace local funding for basic services in hard-pressed districts. Undeniably, Head Start has also had its problems ensuring that funds are spent as Congress intends. But unlike Title I, Head Start has not given its clients and constituents the impression that federal funds are getting lost in a bureaucratic maze. This is due in part to the enormous complexities of Title I's funding formula. It also reflects the fact that Title I funds are channeled through established bureaucracies adept at using outside funds for their own purposes. Head Start funds, by contrast, have been used primarily to create and sustain entirely new institutions, which are more amenable to Congressional directives. This is why researchers such as Professor Bruce Jacobs of the University of Rochester have found Head Start to be more effective at achieving its goals than Title I. It is also why studies consistently demonstrate that those few Head Start centers sponsored by public school boards are much less effective at attaining goals such as parent participation. All these factors contribute to Head Start's strong, sharply-etched image in the public eye. But it may finally come down to this: While neighborhood residents have a hard time identifying the two or three remedial reading teachers in the public school system whose salaries are partially paid for by Title I, Head Start is a distinct, on-going institution, on which loyalties and commitments can be focused.

In these ways, therefore, Head Start bears a likeness to the neighborhood public schools of a generation ago. It also resembles them in other ways: Like the old neighborhood school, Head Start is sustained by many informal relations that give it roots, and make it a palpable expression of shared community values. Indeed, such informal ties seem to flourish because there is minimal conflict over goals—a situation created by the self-selection of families who freely choose to affiliate with Head Start, much as they used to choose their neighborhood schools. Such institutions enjoy a cohesiveness that flows from the common concerns of their clients. Finally, like the old neighborhood school, Head Start is a "permeable institution," one that raises relatively few bureaucratic or professional barriers against parents and neighbors who wish to be part of it.

There is, then, a certain retrograde quality about Head Start.

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In an increasingly formalized, bureaucratized society, it offers a haven of informality to those least able to cope with complicated regulations and impersonal professionalism. Head Start centers provide a publicly-supported refuge where formal goals do not crowd out informal objectives and relations. In some respects Head Start's hybrid of the public and the private is reminiscent of the political machines that once dominated urban politics. For just as the machines parlayed public resources and private loyalties to integrate marginal groups into the social and political mainstream, so does Head Start today. And this aspect of Head Start is not entirely serendipitous. One of the explicit objectives of the planners of community action programs such as Head Start was to find the functional equivalent of the political machines for the unorganized urban poor. (The irony, of course, is that because it is the creation of reformers, Head Start has escaped being the object of their reform zeal, while the machines themselves have not.)

Unfortunately, all this seems utterly lost on conservatives. With tuition tax credits they seek to recapture the virtues of the neighborhood school, yet they remain oblivious to the fact that a program such as Head Start never lost those virtues, and demonstrates their continuing validity. For although the President may have preserved and even advocated beefing up Head Start, his administration still lacks any rationale that defends these decisions in terms of its overall domestic policy agenda. Indeed, because these decisions follow upon reports that the Office of Management and Budget almost succeeded in wiping out Head Start, its reprieve appears as little more than a pragmatic concession to political reality.

Of course, it is easy to understand conservative wariness of Head Start. It would be surprising if a conservative administration were to adopt as its own one of liberalism's few unqualified social policy successes—especially when that success raises the specter of government child care. This uneasiness is only reinforced when liberals enthusiastically cite Head Start as a model for future government efforts in child care. Naturally, many conservatives view the program as a stalking horse for a greatly expanded federal role in child care—as, after all, do many liberals. In the words of Gilbert Steiner: "Head Start's unique contribution has been to give intellectual respectability to out-of-home child care under public auspices."

But if conservative suspicion of Head Start is understandable, it is nonetheless regrettable. For not only does Head Start offer

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the opportunity to teach liberals a few hard lessons, it offers conservatives the chance to learn a few themselves.

The first, and perhaps most difficult, lesson concerns the validity of the special claims by black Americans against the polity. To blacks, programs such as Head Start represent an acknowledgement by the entire society of their tragic history. There is an explicitly public aspect to such commitments which the market solutions favored by conservatives simply do not encompass. Conservatives may be correct in saying that real progress for blacks will come ultimately through the market. But in the interim, black citizens will not only look to government to remedy specific market failures, they will look to government for recognition of their unique claims on the American conscience.

Needless to say, this is not a proposition conservatives will readily accept. The special needs and claims of black Americans are themes that have been thoroughly abused in our time. Yet conservatives who are justifiably fed up with perversions of this position must nevertheless recognize its fundamental validity. Head Start should remind conservatives that it is, after all, possible to address the special needs of black Americans without sacrificing commitment to equality of opportunity.

The next point that Head Start teaches conservatives is that government programs need not undermine voluntarism and self-reliance. Indeed, for almost two decades Head Start has been demonstrating that a government program can actually stimulate local initiative and self-help efforts. To be sure, this is the respect in which Head Start is least typical of most federal programs. But it does show that government can provide a rubric that facilitates, or even causes, freely-associating individuals to come together to work on their problems.

Finally, Head Start should suggest to conservatives the possibility of an alternative social policy agenda. The need for this is surely evident, as the present administration vacillates between extremes of zealous budget-cutting and reluctantly pragmatic acceptance of entrenched programs. The irony of this situation is that the Reagan presidency gets no credit for the support it does give to programs like Head Start. It ends up merely cutting back the overgrowth, but receives political flack for presumably uprooting the entire welfare state. And because it lacks any principled response, justifying its concession to political reality, the administration gives more and more ground to its critics. The only advantage it obtains is that the incessant wailing of the critics makes it unnecessary to

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explain these same concessions to some of Reagan's more zealous supporters.

To be sure, the administration's chief problem is not intellectual but political: It must constantly struggle to maintain its coalition of those who implacably oppose the welfare state, and those who merely harbor uneasiness about its recent rapid growth and direction. Yet keeping this coalition together may very well require a reasoned, principled response which can interpret and explain the administration's actions in a way that transcends political expediency.

At this juncture, Head Start might suggest to conservatives some possible outlines of their own vision of a conservative welfare state. Such a vision would have to balance an awareness of individual aspiration with an appreciation of group culture, and the need for group maintenance. It would have to weigh its commitment to equality of opportunity against its concern to maintain self-reliance and local initiative. It is not enough to remain sensitive to occasions where the state saps the vitality of the social flux surrounding it; government must also seek occasions where it can tap into, and perhaps even reinforce, that vitality. Finally, such a vision would chart a path between the enervating pessimism of those who dwell upon the weaknesses of the poor, and the facile optimism of those who would wave such weaknesses away with the magic wand of social policy.

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EDITORS' NOTE: Due to an editorial error, Edwin Harwood, author of "Can Immigration Laws Be Enforced?" in our last number, was incorrectly identified as former director of the Immigration and Naturalization Service. We apologize for the error.

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Neo-Lysenkoism, IQ, and the press

BERNARD D. DAVIS

STEPHEN JAY GOULD, a professor of geology at Harvard, has become one of the best known American scientists. His many essays on natural history are entertaining and highly readable, and his attack on the "establishment" version of Darwinian evolution has received so much attention that his picture appeared on the cover of *Newsweek*. He personalizes his expository writing in a breezy, self-deprecating manner, and he comes across as warm-hearted, socially concerned, and commendably on the side of the underdog. Hence he is able to present scientific material effectively to a popular audience—a valuable contribution, and a public service, as long as his scientific message is sound.

It is therefore not surprising that Gould's history of the efforts to measure human intelligence, *The Mismeasure of Man*, received many glowing reviews in the popular and literary press, and even a National Book Critics Circle award.[1] Yet the reviews that have appeared in scientific journals, focusing on content rather than on style or on political appeal, have been highly critical of both the book's version of history and its scientific arguments. The paradox is striking. If a scholar wrote a tendentious history of medicine that began with phlebotomy and purges, moved on to the Tuskegee experiment on syphilitic Negroes, and ended with the thalidomide

[1] Stephen Jay Gould, *The Mismeasure of Man* (New York: Norton, 1981).

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disaster, he would convince few people that medicine is all bad, and he would ruin his reputation. So we must ask: Why did Gould write a book that fits this model all too closely? Why were most reviewers so uncritical? And how can non-scientific journals improve their reviews of books on scientific aspects of controversial political issues?

Reviews in the popular press

Typical of the literary reviews of Gould's book is the one that appeared in the *New York Times Book Review*. June Goodfield, a historian and popular writer on science, is effusive: In his "most significant book yet, Mr. Gould grasps the supporting pillars of the temple in a lethal grip of historical scholarship and analysis—and brings the whole edifice of biological determinism crashing down." *The Mismeasure of Man*, she writes, also shows that, while science can never be wholly objective, "this gloriously human enterprise does provide us both with a method for challenging the status quo and for revealing true knowledge about the world." Moreover, Gould "affirms that most things are humanly possible, and that attempts to confine human beings to limited categories are both downright wicked and bound to be self-defeating."

In the *New Yorker* the book was reviewed by Jeremy Bernstein, a philosophically-inclined physicist. His analyses of scientific books have in general been excellent, and we might have expected him to be critical of Gould's methodology. But in fact, because Bernstein saw the book as a powerful salvo against racism, he misread it, imputing to Gould his own, different views on intelligence. Bernstein's answer to racism is to emphasize "how numerous the genetically expressed variations are *within* any social group," whereas Gould in fact insists that in the area of behavior, genetic differences should be ignored. Missing this fundamental disagreement, Bernstein uncritically accepts Gould's indictment of intelligence tests: "because of the false reification of intelligence hundreds of thousands—perhaps millions—of people's lives have been circumscribed or even ruined."

The most perplexing review is Richard Lewontin's in the *New York Review of Books*. Lewontin represents a biased choice on the part of that journal, since he and Gould had taught a course together at Harvard on the dangers of applying biology to society, and he has called for the development of a true "socialist science" to challenge the "bourgeois science" of most Western culture. Yet

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he turns out to be an interesting choice, for his article is, as usual, brilliant, erudite, and idiosyncratic.

Lewontin agrees that political views, whether good or bad, will inevitably influence the conclusions of scientists, but he chides Gould for ignoring Marxist principles and overemphasizing racism: "*The Mismeasure of Man* remains a curiously unpolitical and unphilosophical book." The emphasis "on racism and ethnocentrism in the study of abilities is an American bias." Further, "In America, race, ethnicity, and class are so confounded, and the reality of social class so firmly denied, that it is easy to lose sight of the general setting of class conflict out of which biological determinism arose." He concludes with a profoundly pessimistic bit of metaphysics: "The reification of intelligence . . . is an error that is deeply built into the atomistic system of Cartesian explanation that characterizes all of our national science. It is not easy, given the analytic mode of science, to replace the clockwork mind with something less silly." But "the wholesale rejection of analysis in favor of an obscurantist holism has been worse. Imprisoned by our Cartesianism, we do not know how to think about thinking." It is unfortunate that this truly gifted scientist trapped himself in evolutionary genetics, a field so at odds with his social convictions.

The popular press has thought the issues to be more clear-cut. *Newsweek* refers to "this splendid new case study of biased science and its social abuse." *The Saturday Review* speaks of "a rare book—at once of great importance and wonderful to read." *The Atlantic Monthly* says, "The tale would be funny if one could overlook the misery that such tests have inflicted on generations of defenseless school children." *The Key Reporter* (of Phi Beta Kappa) calls the book "a strident, polemical, effective critique."

The scientific reviews

While the nonscientific reviews of *The Mismeasure of Man* were almost uniformly laudatory, the reviews in the scientific journals were almost all highly critical. In *Science*, a widely read American publication that covers all the sciences, the book was reviewed by Franz Samelson, a psychologist at Kansas State University. He concludes that as a history of science the book has a number of problems. For example, he notes, Gould claims that Army intelligence tests led to the Immigration Restriction Act of 1925; in fact, *no* psychologist testified before Congress, and the three reports of the House Committee on Immigration do not mention intelligence tests

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at all. On another point, Gould's discussion of the "fallacy of reification"—the grouping of different abilities, such as verbal reasoning and spatial reasoning, into one measure of intelligence—"remains blurred, since Gould's emphasis seems to shift about. Exactly what does he object to? [Gould] never tells us directly what his own proper, unreified conception of intelligence is." Finally, Gould fails to acknowledge that ability testing is "a sizable industry in the real world and a smaller one in academia. And all Gould's incisive thrusts at finagling and fallacies seem to be almost irrelevant. . . . Whatever intellectual victories over the [mostly dead] testers Gould's eminently readable book achieves . . . the real action seems to be elsewhere."

In *Nature*, a distinguished British journal of general science, Steve Blinkhorn, writing from the Neuropsychology Laboratory at Stanford University, is blunt: "With a glittering prose style and as honestly held a set of prejudices as you could hope to meet in a day's crusading, S.J. Gould presents his attempt at identifying the fatal flaw in the theory and measurement of intelligence. Of course everyone knows there must be a fatal flaw, but so far reports of its discovery have been consistently premature." More specifically, "the substantive discussion of the theory of intelligence stops at the stage it was in more than a quarter of a century ago." Gould "has nothing to say which is both accurate and at issue when it comes to substantive or methodological points." Finally, many of his assertions "have the routine flavor of Radio Moscow news broadcasts when there really is no crisis to shout about. You have to admire the skill in presentation, but what a waste of talent."

Science 82, a journal designed for the general public, chose as its reviewer Candace Pert, a biochemist at the National Institute of Mental Health, who has been researching the application of molecular biology and cell biology to the study of the brain. "Gould's history of pseudoscientific racism in measuring human intelligence," she writes, "does not, despite his claims, negate the sociobiological notion that differences in human genetic composition can produce differences in brain proteins, resulting in differences in behavior and personality." In her view, "if modern neuroscience reveals biochemical differences that account for human variability, we must deal with this important knowledge; . . . ignoring differences because they *could* become abuses will not make them go away."

The most extensive scientific analysis of Gould's book appeared in *Contemporary Education Review*. Arthur R. Jensen, of the Institute for Human Learning at the University of California, Ber-

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keley, analyzes Gould's technical arguments in great detail and reaches sharply critical conclusions. He also discusses recent research demonstrating a high correlation of IQ with speed of information processing, as measured by simple reaction-time techniques. These findings encourage a hope that a merger with neurobiology may soon make studies of intelligence much more penetrating and less controversial.

The review that appeared in *Scientific American* is an exception to the harsh criticism in the scientific press. Ordinarily *Scientific American* presents solid science in an interesting way to a very broad audience, and it has been restrained and non-partisan in treating most controversial issues of science. However, there is one exception: The publisher, Gerard Piel, and the book editor, Philip Morrison, have long seen the study of the genetics of intelligence as a threat to racial justice. According to Morrison, as "a persuasive chronicle of prejudice in science, founded on scrupulous examination of the record, enlivened by the talent of a gifted writer, this volume takes on some of the sinister appeal of a tale of heinous crime."

Gould's selective history

It is important for the general public to understand why scientists close to the field have reacted so negatively to *The Mismeasure of Man*. The strength of science in analyzing reality comes from its strict separation of facts from values, of observations from expectations. Measurements of intelligence, and of its hereditary and environmental origins, are part of natural science—even though one must go beyond science, bringing in judgments of value, in order to probe the social implications of the results. Hence any purported scientific exposition of these topics must be as dispassionate and objective as possible about the facts, whatever the social views the author favors. These are precious standards, whose corruption we must resist. Unfortunately, throughout Gould's book they are not met.

The early chapters describe in detail some extremely naive nineteenth-century attempts to measure intelligence in terms of brain size or body shape. These are fossils from the history of mental testing, and their excavation would ordinarily bore most readers. Gould, however, uses them skillfully, both to give the impression of a thorough scholarly analysis and to arouse indignation at such evil uses of science. Unfortunately, the advocacy and the emotional

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appeal betray the scholarship. In the early stages of any science, naive ideas, often reflecting the prejudice of the time, are inevitable. Gould infers that this legacy will persist; but history demonstrates that the advance of science depends on continually discarding false hypotheses and preconceptions. Gould further arouses the reader's indigation by describing the ill-informed and prejudiced views of Paul Broca and Louis Agassiz on racial differences. But at a time when slavery was legal, and long before the science of genetics revolutionized our understanding of the nature of race, it is hardly surprising that these views were held by leading scientists—and even, as Gould notes, by such enlightened social critics as Benjamin Franklin and Thomas Jefferson. To remind us of these roots in the history of racism is instructive—but to imply a similar prejudice in today's investigators of intelligence is unfair.

After emphasizing that Alfred Binet developed the first intelligence test, in France in 1905, only in order to improve the education of backward children, Gould goes on to describe misuses of the subsequent tests. His most horrifying example is a primitive study conducted in 1912, in which H.H. Goddard administered intelligence tests to a number of Ellis Island immigrants. He set his standards at an absurdly high level, classifying in the end an extraordinarily large percentage of subjects as "feeble-minded"—a term that then included "morons" who could nonetheless manage to make a living, though it is now applied only to those with a more severe deficiency. Probably nothing has so aroused antipathy to intelligence testing as his widely-cited findings that, for example, 83 percent of the Jews and 79 percent of the Italians he tested were "feeble-minded."

Gould's interpretation of Goddard's findings is summarized as follows: "Could anyone be made to believe that four-fifths of any nation were morons?" But let us look at what Goddard actually wrote. The first sentence of his paper states that "this is not a study of immigrants in general but of six small highly selected groups," leaving out those at either end of the scale who were "obviously" either normal or feeble-minded.[2] At that time immigration officers were using subjective impressions to reject those people who appeared to be too retarded to learn to make a living, and Goddard hoped that tests could provide a more reliable basis for such decisions. Surprised at the results, he added a discussion that Gould conveniently ignores:

[2] H.H. Goddard, "Mental Tests and the Immigrant," *Journal of Delinquency* 2 (1917): 243.

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> Are these . . . cases of hereditary defects or cases of apparent mental defects by deprivation? . . . We know of no data on this point, but indirectly we may argue that it is far more probable that their condition is due to environment than it is due to heredity. To mention only two considerations: First, we know their environment has been poor. It seems able to account for the result. Second, this kind of immigration has been going on for 20 years. If the condition were due to hereditary feeble-mindedness we should properly expect a noticeable increase in the proportion of the feeble-minded of foreign ancestry. This is not the case.

Goddard ended up *favoring* the immigration of people who appeared to possess limited present intelligence: Not only would they perform useful work, but "we may be confident that their children will be of average intelligence and if rightly brought up will be good citizens." Goddard was hardly a great scientist, but he deserves a fair hearing. The statements cited here hardly warrant Gould's conclusion that to Goddard "the cure [for feeble-mindedness] seemed simple enough: don't allow native morons to breed and keep foreign ones out."

After some years, as Gould notes, most of the early enthusiasts changed their views. Goddard, Terman, and Brigham each admitted that he had overestimated the ability of tests to detect innate differences and had underestimated the influence of cultural background. One might take this example of growth in understanding as a sign of the whole field's increasing maturity and objectivity. Gould, however, sees these confessions only as support for his accusation of bias.

What is "biological determinism"?

Gould's own degree of bias is unusual in a work by a scientist. What is the source of this passion? Not mental testing itself, he makes it clear. Rather, his arguments against this testing are merely weapons for attacking the real enemy: what he calls "biological determinism."

As Gould correctly points out, early investigators who tried to measure intelligence were indeed *determinists*: They had the illusion that they were directly measuring a capacity determined by the genes. But while he continues to tar investigators of behavioral genetics with this brush, in fact they are now all *interactionists*. For while genetics necessarily began with the simplest relationships, in which a single gene determines a trait (such as the color of Mendel's peas, or a human blood type), the science eventually moved

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on to the quantitatively varying (metric) physical or behavioral traits, which socially are much more interesting. These were found to depend on multiple genes, and also on their cumulative interactions with the environment. This concept is now precisely formulated as the concept of *heritability*: a measure of what fraction of the total variance in a trait, in a particular population, is due to genetic differences between individuals—the other fraction coming from environmental influences.

Since Gould would prefer to combat the straw man of naive, "pure" determinism, he fails to note that the science of genetics has altogether replaced this concept with interactionism. But since he is too familiar with biology to deny this conceptual shift, he appropriates it for his own ideological argument: "The difference between strict hereditarians and their opponents is not, as some caricatures suggest, the belief that a child's performance is all inborn or all a function of environment and learning. I doubt that the most committed antihereditarians have ever denied the existence of innate variation among children." Curiously, "hereditarians" (Gould's misnomer for interactionists) are not credited with a similar appreciation of both factors. Instead, they are neatly skewered by being called "strict."

What, then, is the quarrel about? According to Gould, "the differences [between the camps] are more a matter of social policy and educational practice. Hereditarians view their measures of intelligence as measures of permanent inborn limits. Children, so labeled, should be sorted, trained according to their inheritance and channeled into professions appropriate for their biology." But good investigators, such as Binet, did not want mental testing to become a theory of limits. For them, Gould argues, "mental testing becomes a theory for *enhancing potential* through proper education [emphasis added]." [3]

This is a deliberate effort to blur the issue. With one hand Gould concedes innate differences, and with the other he takes them away. If the two camps really differ mostly about social policy and not about the importance of hereditary factors, why does he struggle so to deny the latter? Similarly, whether the hereditary component

[3] Gould's reference to "enhancing potential" is revealing, for it confuses *genotype* (an inborn range of potential) and *phenotype* (the actual *ability* developed within that range). He should have spoken instead of enhancing performance, or of enhancing the development of potential. This is not a trivial semantic distinction: It is essential for any clear analysis of the interaction of genes and environment. Gould's language suggests that he either does not fully understand, or feels compelled to ignore, this key concept in genetics.

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is large or small, is it not a fact that individuals differ widely in their phenotypic, developed ability to absorb various kinds of education and to perform various kinds of jobs? Yet the book has not one word about the possible value of mental tests for educational and vocational placement or for comparing educational programs. (However, consistent with Gould's admiration for Binet's circumscribed aim, he does note the value of mental tests in guiding the therapy of his own child.) Finally, in describing the incredibly crude use of the Army's "Alpha" tests in 1917, Gould ignores the current use of sophisticated tests to help the armed forces select candidates for expensive training programs.

It is sad that Gould, preoccupied with the destructive social consequences of earlier biological misconceptions, is convinced that any modern studies on human behavioral genetics must have similar consequences. For to the contrary, modern evolutionary biology has had an opposite effect—by providing a powerful argument against racism. In the past, a widely-accepted justification for race discrimination stemmed from a Platonic doctrine that prevailed for over two millenia: the belief that we can best understand groups of entities (including species and races) in typological (essentialist) terms, i.e., characterizing all the individuals in a group in terms of a hypothetical ideal type or essence, and dismissing differences from the ideal as trivial. Today, however, population genetics has shown that all species are genetically diverse, and that the differences are not trivial but rather are the source of evolution. With this shift from an essentialist to a populationist view, the genetic differences between races (except for some superficial physical traits) are now seen to be statistical rather than essentially uniform. And since the statistical distributions overlap extensively from one group to another, one cannot infer an individual's potential from his race.

If the pre-genetic, typological misconceptions still prevailed, the modern revolt against race discrimination would surely have encountered much greater resistance, and it might even have been impossible. Unfortunately, biology has received little credit for this major social contribution, and none at all from Stephen Jay Gould.

The concept of general intelligence

The historical chapters, constituting most of *The Mismeasure of Man*, serve to convince the reader that the measurement of intel-

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ligence is immoral. But after this build-up, Gould, shifting from historian to scientist, offers an even sharper objection: The measurement is also unscientific.

The problem arises because these tests were developed for teachers who often have trouble deciding whether a pupil's poor performance is primarily due to limitations in motivation or to limitations in ability. The original purpose of intelligence tests, as we have noted, was to provide a more objective and reliable supplement to the teacher's subjective impression, in order to help pupils who are doing badly. But this early use of testing inevitably led to the development of additional possibilities. For example, by ranking the whole class, the tests also detected students who could move faster than the average. In addition, more specialized tests have evolved, especially for advanced students and for purposes of job placement. But as practical tools in public education, the most widely used tests are still composite ones designed, like Binet's test, to cover a range of abilities pertinent to the whole curriculum.

Psychologists generally agree that the greatest success of their field has been in intelligence testing—both practical, in estimating individual abilities, and theoretical, in exploring the cognitive functions of the human brain. For it might have turned out that the determinants of different cognitive abilities were uncorrelated: that is, that the levels of abilities might be distributed independently. But in fact, tests for different kinds of intelligence—the ability to assimilate, retain, process, and express different kinds of complex information—show a remarkably high correlation in their results. The rank-ordering of most individuals is similar—but not identical—on a verbal test, an arithmetic test, or a nonverbal test involving spatial patterns. These results confirm an impression that we all tacitly build on in our daily lives: Some people are generally brighter than others, but people also differ in their special aptitudes. Both sets of differences are partly inborn and partly due to factors affecting the development of the inborn potentials.

The common factor shared in different cognitive abilities, as determined by statistical analysis of their correlations, was named *g* by Charles Spearman. In the ordinary IQ tests it contributes well over half the variance within a population, the rest representing uncorrelated differences in special abilities. Someday, the basis for both kinds of variation will no doubt be better understood in cellular and biochemical terms. Indeed, it is encouraging that studies of the brain are rapidly progressing from its simpler integrative functions, such as the processing of visual stimuli, to more complex

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cognitive activities. Meanwhile, though, it is fruitful for psychologists to examine intelligence at the level of performance, and to compare ways of improving that performance, just as geneticists could usefully deal with genes as formal units long before discovering their molecular structure and mode of action.

Examined at this level, such tests have unquestionably helped innumerable teachers to identify pupils whose brightness was concealed by shyness, cultural barriers, or rebelliousness. On the other hand, there is also no doubt that the tests have often been interpreted or applied badly. If teachers focus excessively on general intelligence, measured on a one-dimensional scale, they may fail to encourage the development of each individual's particular strengths. Moreover, the assumption that *g* is entirely innate may persist in some quarters even though the concept of heritability (fractionation into genetic and environmental components) has now completely replaced that early view among scientists. But perhaps the greatest danger is that the test results may tend to be regarded as some kind of index of social worth, instead of recognizing that they measure only a limited set of behavioral traits. For while these are key traits for certain educational and vocational purposes, the tests ignore many other traits that also have great social value: for example, physical attractiveness, motor skills, creativity, artistic talent, social sensitivity, and features of character and temperament. The concept of any single scale of social worth has no meaning. Gould, however, keeps the reader's indignation alive by regularly defining the objective of the tests as the measurement of "worth"—sometimes qualified as "intellectual worth," but often unqualified, or even denoted as "innate worth."

Gould is clearly not interested in evaluating the past uses of intelligence tests fairly, or in improving their use. To him the tests must be extirpated because—and here we get back to the real villain—in using them to compare *individuals* one inevitably runs into consistent differences in the mean values for various racial and socioeconomic *groups*. "This book . . . is about the abstraction of intelligence as a single entity . . . invariably to find that oppressed and disadvantaged groups—races, classes, or sexes—are innately inferior and deserve their status." [4] This statement, for all its hyperbole,

[4] Gould's broad generalization ignores the fact that the disadvantaged Chinese and Japanese in this country have consistently scored even higher than Caucasians. Moreover, in including sex discrimination in the IQ controversy, he is straying far from reality. In fact, females average the same as males on standard IQ tests: They perform slightly better on verbal tests, and slightly worse on spatial tests, but the tests are constructed to balance these differences.

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captures what the book is about: Concerned with group differences, Gould has decided not to add to the polemics on their causes, but to attack the problem at another level. For if he can demonstrate that the very concept of measurable intelligence is meaningless, then it follows that all those disturbing data on group differences are meaningless as well. His weapon is his "discovery," first announced in the *New York Review of Books*, of two alleged "deep fallacies" underlying the concept of general intelligence: reification and the factoring of intelligence.

The "deep fallacies" of reification and factoring

Gould's argument on reification purports to get at the philosophical foundation of the field. He claims that general intelligence, defined as the factor common to different cognitive abilities, is merely a mathematical abstraction; hence if we consider it a measurable attribute we are reifying it, falsely converting an abstraction into an "entity" or a "thing"—variously referred to as "a hard, quantifiable thing," "a quantifiable fundamental particle," "a thing in the most direct, material sense." Here he has dug himself a deep hole. If this implication of localization is a fallacy for general intelligence, why is it not also a fallacy for specialized forms of intelligence, which Gould professes to accept? Going even further, he seems to abandon materialism altogether: "Once intelligence becomes an entity, standard procedures of science virtually dictate that a location and physical substrate be sought for it. Since the brain is the seat of mentality, intelligence must reside there." But we must ask what reasonable scientific alternative there is. A Cartesian dualism, in which mental processes exist apart from a material base?

Indeed, this whole argument is fantastic. The scientist does not measure "material things": He measures properties (such as length or mass), sometimes of a single "thing" (however defined), and sometimes of an organized collection of things, such as a machine, a biological organ, or an organism. In a particularly complex collection, the brain, some properties (i.e., specific functions) have been traced to narrowly-localized regions (such as the sensory or motor nuclei connected to particular parts of the body). Others, however, depend on connections between widely-separated regions. Accordingly, the *reality* of generalized intelligence—or equally, of any specialized cognitive ability—does not require a "quantifiable fundamental particle." Like information transfer in a telephone network or in a computer, cognition would be much the same whether the

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cells involved are grouped together in one region of the brain or are connected by fibers running between dispersed locations.

It is astonishing that a scientist with Gould's credentials, and with ready access to colleagues in the relevant fields, would present such a phony "discovery" as the fallacy of reification, and on the basis of truly antiquated views of neurobiology. He writes that the existence of general intelligence could have been proved correct "if biochemists had ever found Spearman's cerebral energy." This phrase refers to a particularly thin speculation, in the 1920s, about the physical basis for differences in IQ. But neurobiologists today simply do not deal in such vague concepts. Instead, they measure variation in the richness of cells, and connections, and neurotransmitter molecules in different areas of the brain.

The molecular studies linking these features of the brain to genes *have hardly begun. But it is clear that this molecular biology must* build on the principle that genes code for specific molecular components in brain cells, as in all other cells, and that these genes, like other genes, will vary from one individual to another. Moreover, these gene products in the brain will give rise to variation not only in its wiring diagram but also in the switches (synapses) that transmit impulses between its nerve cells. We are unlikely to be able to correlate intelligence with the incredibly complex and subtle circuitry of the brain for a long time to come; but it is not hard to imagine correlation with molecular differences in a class of synapses in different brains, affecting the speed of processing information just like differences in the transitors of different computers.

Gould's second "deep fallacy," factoring, is statistical. Here he reconstructs an old controversy, which the field has long outgrown. In this dispute, Spearman calculated *g* (the measure of general intelligence) by running tests for different abilities and analyzing their correlations so as to extract their common component. Thurstone, whom Gould admires as "the exterminating angel of Spearman's *g*," preferred to focus on the *specialized* differences in intelligence. He therefore analyzed the results in a way that did not extract the overall correlation, but dispersed it among the differentiated primary factors. But the correlation did not disappear: Another calculation could extract it from the primary factors as a "second-order" *g*. Gould, however, sets out to "prove" mathematically that the primary correlation is a statistical artifact and that the second-order one is negligible.

To analyze Gould's unconvincing argument would be irrelevant. For in the end, after claiming to have disproved the correlations,

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he casually accepts them as self-evident: "The fact of pervasive positive correlation between mental tests must be one of the most unsurprising major discoveries in the history of science." This is itself a very curious judgment. In fact, the correlation is not inevitable or self-evident, for the brain might have been so constructed that a strong endowment of cells for verbal skills would leave less room for cells concerned with numerical abilities, etc. Different cognitive abilities might then exhibit no correlation, or even a negative correlation, and psychologists would then have found no general intelligence to measure.

Gould's arguments about *g* are irrelevant for another reason as well: Though he believes they support his aim of slaying the dragon of the heritability of intelligence, the assumed link to that problem does not exist. "The chimerical nature of *g* is the rotten core of Jensen's edifice, and of the entire hereditarian school. . . . Spearman's *g*, and its attendant claim that intelligence is a single, measurable entity, provided the only theoretical justification that hereditarian theories of IQ have ever had." This assertion is utterly false. *Whether an IQ test measures mostly general intelligence or mostly a collection of independent abilities, the heritability of whatever it measures will be precisely the same.* IQ's factor structure simply does not enter the equations for calculating its heritability.

It is unfortunate that Gould contrasts general and special intelligence with such overkill, for the differences deserve serious consideration, and the advance of behavioral genetics, focusing on units of inheritance, will force psychologists to aim for a more refined dissection of cognitive functions. But the prospect of such advances does not require us to deny that a wider, overall measurement might have had historical value, and might still have practical value for educational purposes.

Objectivity in science

In addition to moral and technical objections to mental testing, Gould offers an epistemological argument that has much broader implications: "I criticize the myth that science itself is an objective enterprise. . . . By what right, other than our own biases, can we identify Broca's prejudice and hold that science now operates independently of culture and class?" On the other hand, he adds that "As a practicing scientist, I share the credo of my colleagues: I believe that a factual reality exists and that science, though often in an obtuse and erratic manner, can learn about it." This is all very

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well—but throughout the rest of the book he proceeds as though objectivity is a myth and no factual reality can be discovered.

In fact, the key to the success of the scientific enterprise is its passionate dedication to objectivity: Its advance depends on accepting the conclusions dictated by verifiable observations and by logic, even when they conflict with common sense or with treasured preconceptions. To be sure, some years ago Marxist philosophers, generalizing from the influence of social and economic arrangements on many aspects of our behavior, initiated an attack on the objectivity of science. Moreover, this view has become rather widely accepted in the social sciences. But the study of the genetics of intelligence is a part of natural science, rather than of social science, even though its findings have relevance for social questions. If the science is well done it will tell us objectively what exists, without value judgments; these judgments will arise only in the social applications of that knowledge. For example, insights into the range and distribution of abilities do not tell us how much of our educational resources to devote to the gifted and how much to the intellectually handicapped; this knowledge simply improves our recognition of the reality with which we must cope.

The main source of confusion here is that the word "science" is used with three different meanings, in different contexts: science as a set of activities, as a methodology, and as a body of knowledge. The *activities* of a scientist certainly depend heavily on non-objective factors. These include the resources and the incentives that a society provides for pursuing particular projects, and also the personal choice of problems, hypotheses, and experimental design. The *methodology* of science is much more objective, but it is also influenced by fashions in the scientific community. The *body of scientific knowledge*, however, is a very different matter. Its observations and conclusions, after having been sufficiently verified and built upon, correspond to reality more objectively and reliably than any other form of knowledge achieved by man. To be sure, attachment to a cherished hypothesis may lead a scientist into error. Moreover, at the cutting edge of a science, contradictory results and interpretations are common. But the mistakes are eventually discarded, through a finely honed system of communal criticisms and verification. Thus Broca's name has been immortalized by its assignment to a structure in the brain that he recognized, whereas his premature efforts to correlate gross structural variations with intelligence have left no residue in the body of scientific knowledge.

Accordingly, however much the findings in some areas of science

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may be relevant to our social judgments, they are obtained by a method designed to separate objective analysis of nature from subjective value judgments. Long experience has shown that when these findings are well-verified, they have an exceedingly high probability of being universal, cumulative, and value-free. Gould, however, treats the history of science like political history, with which his readers are more familiar: a history in which human motives and errors from the past will inevitably recur. He thus skillfully promotes a doubt that the biological roots of human behavior can ever be explored scientifically.

Politicizing and publicizing science

A left-wing group called "Science for the People," of which Gould is a member, has been particularly active in campaigning against such studies. Instead of focusing, in the earlier tradition of radical groups, on defects in our political and economic system that demand radical change, this group has aimed at politicizing science, attacking in particular any aspect of genetics that may have social implications. Their targets have included genetic engineering, research on the effects of an XYY set of chromosomes, sociobiology, and efforts to measure the heritability of intelligence. Several years ago Gould co-signed their intemperate attack on E.O. Wilson's *Sociobiology: The New Synthesis*.[5] Now, in *The Mismeasure of Man*, he has extended the attack to cognitive psychology and educational testing, because they may reveal genetic differences.

Gould has spelled out explicitly his ideological commitment, and also its influence on his science. As we shall see, his main scientific contribution has been the claim that evolution has occurred mainly through revolutionary jumps, rather than by small steps. Both in a "Dialectics Workshop" [6] and in a scientific paper[7] he supports this claim with a citation from Marx: "Darwin's gradualism was part of the cultural context, not of nature." He adds that "alternate [sic] conceptions of change have respectable pedigrees in philosophy. Hegel's dialectical laws, translated into a materialist context . . . are explicitly punctuational, as befits a theory of revo-

[5] E. Allen *et al.*, Letter, *New York Review of Books* (November 13, 1975): 43. See also Sociobiology Study Group of Science for the People in *BioScience* 26 (1976): 182. This article includes the remarkable statement that "We know of no relevant constraint placed on social processes by human biology."

[6] S.J. Gould, "The Episodic Nature of Change versus the Dogma of Gradualism," *Science and Nature* 2 (1979): 5.

[7] S.J. Gould and N. Eldridge, "Punctuated Equilibria: The Tempo and Mode of Evolution Reconsidered," *Paleobiology* 3 (1977): 115.

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lutionary transformation in human society." And, "it may also not be irrelevant to our personal preferences [about evolutionary mechanisms] that one of us learned his Marxism, literally at his Daddy's knee." To most scientists (other than those tethered to a party line) such a claim of support from (or for) Hegel is silly, and such an insertion of an ideological preference, whether from the left or the right, is a corruption of science.

These quotations may help us to understand why *The Mismeasure of Man* ends up as a sophisticated piece of political propaganda, rather than as a balanced scientific analysis. Gould is entitled, of course, to whatever political views he wishes. But the reader is also entitled to be aware of his agenda.

It may also be pertinent to comment briefly on Gould's scientific writing. His claim to have disproved the widely-accepted, "gradualist" view of evolution has had great appeal for science reporters, but it has been subject to intense criticism by his professional colleagues. Of course, controversies in science are not rare, and it would not be appropriate here to try to judge Gould's stature as a scientist. It is pertinent, however, to note features of his professional writing remarkably similar to those that I have criticized in *The Mismeasure of Man*. In both contexts he focuses primarily on older approaches to problems in which genetics is now central; he picks his history; and he handles key concepts in an ambiguous manner. Moreover, he is fond of artificial dichotomies that oversimplify complex issues: evolution by leaps versus evolution by gradual steps; biological determinists versus environmentalists; general intelligence versus specialized intelligence.

While Gould has made a valuable scientific contribution in providing evidence that marked fluctuations in rate are common in evolution, the most general professional criticism is that in dramatizing this contribution he has set up a non-existent conflict with the prevailing gradualist view. For he proceeds as though gradualism implies a relatively constant rate as well as small steps. But even Darwin recognized that the rate of evolution might vary widely, and modern investigators have demonstrated many mechanisms that contribute to such fluctuation.

Neo-Lysenkoism

In *The Mismeasure of Man* Gould fails to live up to the trust engendered by his credentials. His historical account is highly selective; he asserts the non-objectivity of science so that he can test

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for scientific truth, flagrantly, by the standards of his own social and political convictions; and by linking his critique to the quest for fairness and justice, he exploits the generous instincts of his readers. Moreover, while he is admired as a clear writer, in the sense of effective communication, he is not clear in the deeper sense of analyzing ideas sharply and with logical rigor, as we have a right to expect of a disciplined scientist.

It has been uncomfortable to dissect a colleague's book and his background so critically. But I have felt obliged to do so because Gould's public influence, well-earned for his popular writing on less political questions, is being put to mischievous political use in this book. Moreover, its success undermines the ideal of objectivity in scientific expositions, and also reflects a chronic problem of literary publications. My task has been all the more unpleasant because I do not doubt Gould's sincerity in seeking a more just and generous world, and I thoroughly share his conviction that racism remains one of the greatest obstacles.

Unfortunately, the approach that Gould has used to combat racism has serious defects. Instead of recognizing the value of eliminating bias, his answer is to press for equal and opposite bias, in a virtuous direction—not recognizing the irony and the danger of thus subordinating science to fashions of the day. Moreover, as a student of evolution he might have been expected to build on a profound insight of modern genetics and evolutionary biology: that the human species, and each race within it, possesses a wide range of genetic diversity. But instead of emphasizing the importance of recognizing that diversity, Gould remains locked in combat with a prescientific, typological view of heredity, and this position leads him to oppose studies of behavioral genetics altogether. As the reviewer for *Nature* stated, *The Mismeasure of Man* is "a book which exemplifies its own thesis. It is a masterpiece of propaganda, researched in the service of a point of view rather than written from a fund of knowledge."

In effect, we see here Lysenkoism risen again: an effort to outlaw a field of science because it conflicts with a political dogma. To be sure, the new version is more limited in scope, and it does not use the punitive powers of a totalitarian state, as Trofim Lysenko did in the Soviet Union to suppress all of genetics between 1935 and 1965. But that is not necessary in our system: A chilling atmosphere is quite sufficient to prevent funding agencies, investigators, and graduate students from exploring a taboo area. And such Neo-Lysenkoist politicization of science, from both the left

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and the right, is likely to grow, as biology increasingly affects our lives—probing the secrets of our genes and our brain, reshaping our image of our origins and our nature, and adding new dimensions to our understanding of social behavior. When ideologically-committed scientists try to suppress this knowledge they jeopardize a great deal, for without the ideal of objectivity science loses its strength.

Because this feature of science is such a precious asset, the crucial lesson to be drawn from the case of Stephen Jay Gould is the danger of propagating political views under the guise of science. Moreover, this end was furthered, wittingly or not, by the many reviewers whose evaluations were virtually projective tests of their political convictions. For these reviews reflected enormous relief: A voice of scientific authority now assures us that biological diversity does not set serious limits to the goal of equality, and so we will not have to wrestle with the painful problem of refining what we mean by equality.

In scientific journals editors take pains to seek reviewers who can bring true expertise to the evaluation of a book. It is all the more important for editors of literary publications to do likewise, for when a book speaks with scientific authority on a controversial social issue, the innocent lay reader particularly needs protection from propaganda. Science can make a great contribution toward solving our social problems by helping us to base our policies and judgments upon reality, rather than upon wish or conjecture. Because this influence is so powerful it is essential for such contributions to be judged critically, by the standards of science.

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Illusions and mirages in public policy

RICHARD H. THALER

Like most people, I have always found optical illusions fascinating. Figure I is a scale drawing of the world's largest man-made optical illusion—the Gateway Arch in St. Louis. Although it appears to be at least 50 percent taller than it is wide, the height and width are actually equal. This optical illusion is an example of what I will call "judgmental illusions": Somehow the mind is fooled into making an error of judgment. We all erroneously judge the arch's height to be greater than its width.

Another type of optical illusion is the mirage. We have all experienced the illusion of "seeing" water on a perfectly dry highway on a hot day. Such mirages on the desert are commonplace. Mirages, like judgmental illusions, fool the mind. We are fooled into believing that an object exists when it does not.

The subject of this essay is not optical illusions, but rather the related concept of cognitive illusion. Like optical illusions, cognitive illusions can be of two types. Judgmental cognitive illusions induce people to mis-estimate magnitudes, and in a specific direction. Other cognitive illusions are like mirages: A situation is structured such that we are fooled into thinking we have many choices when in fact only one really exists. Both kinds of cognitive illu-

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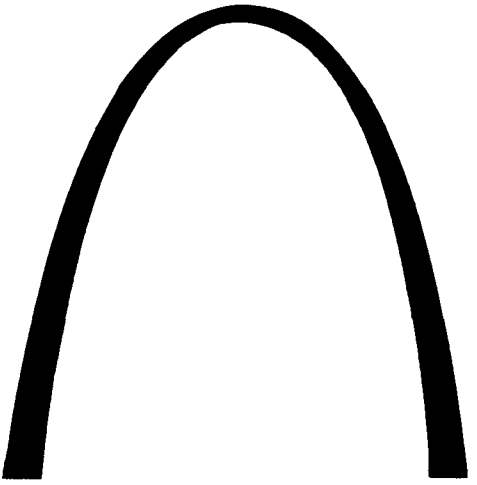
FIGURE I: *The Gateway Arch in St. Louis (scale drawing).*



sions have powerful influences on how people make choices—in their private lives and in the realm of public policy.

Four illusions

The following example of a judgmental cognitive illusion will be familiar to anyone who has taken a course in probability theory:

A class has 25 students in it. What is the chance that at least two students will have a common birthday?

Most people guess that the chance of a match is pretty small, perhaps one in ten or one in 20. In fact, the chance of at least one pair of students having the same birthday is better than 50-50.

The interesting thing about this problem is that it affects almost everyone the same way. We all judge the chance of a match to be smaller than it really is. This is the defining characteristic of a judgmental cognitive illusion: The problem induces predictable errors in a particular direction.

Can such cognitive illusions that create errors in judgment also create errors in contemporary public policy debates? Yes—and to illustrate this I have selected several examples that relate to our perceptions of risk and uncertainty. The first tests one's ability to estimate magnitudes:

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What is the relative frequency of homicides and suicides in the United States?

Most people think homicides are much more common, when in fact suicides are more common—in one recent year there were 27,300 suicides and 20,400 homicides. (This is true in spite of the fact that the official statistics understate the true level of suicides. Many suicides are classified as accidental deaths.) Why do we guess that homicides are more common? Well, often when we have to estimate the frequency of an event or class of events we do so by judging the ease with which we can recall instances of it. Psychologists Daniel Kahneman and Amos Tversky call this the *availability heuristic.*[1] The availability heuristic is usually a good way to estimate frequency because ease of recall is usually highly correlated with actual frequency. Sometimes, however, availability and frequency diverge. Since homicides receive more publicity than suicides, they are more available, and thus are erroneously judged to be more common.

The next example, first devised by Daniel Ellsberg, consists of an imaginary lottery:

> *You are shown three urns, each containing 100 balls. Urn A has 50 red and 50 black balls, urn B has 80 red and 20 black balls, and urn C has 20 red and 80 black balls. You are given a choice between two lotteries. You can take lottery A, in which a ball will be picked at random from urn A. If the ball picked is red you win $100, otherwise you win nothing. Alternatively, you can take lottery BC. In this case the lottery has two stages. The first step is to flip a coin. If it comes up heads you must choose a ball from urn B. If it comes up tails you must choose from urn C. The second step is to pick a ball from the urn determined by the coin flip. Again, if the ball is red you win $100, otherwise you win nothing. Which lottery do you prefer?*

Simple multiplication will confirm that the chance of winning either lottery is 50 percent, yet most people say that they prefer lottery A. Why? Two characteristics of the BC lottery make it un-

[1] See Daniel Kahneman, Paul Slovic, and Amos Tversky, *Judgment Under Uncertainty: Heuristics and Biases* (Cambridge: Cambridge University Press, 1982).

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attractive. First, lottery A is simpler. Complexity itself is aversive. Second, the chance of winning the BC lottery is more ambiguous: Depending on the outcome of the coin flip it might be 80 percent or 20 percent. This ambiguity is also aversive. The moral is that most people—if forced to gamble—would prefer a simple, well-defined risk to a complex, ambiguous risk.[2]

The next set of three situations relates to the value people place on their lives. How much would someone pay to avoid a risk to his life? How much would he charge to take an additional risk?

> Risk Situation 1: *While attending the movies last week you inadvertently exposed yourself to a rare, fatal disease. If you contract the disease, you will die a quick and painless death in one week. The chance that you will contract the disease is exactly .001—that is, one chance in 1,000. Once you get the disease there is no cure, but you can take an innoculation now which will prevent you from getting the disease. Unfortunately there is only a limited supply of the innoculation, and it will be sold to the highest bidders. What is the most you would be willing to pay for this innoculation? (If you wish, you may borrow the money to pay at a low rate of interest.)*

> Risk Situation 2: *This is basically the same as situation 1 with the following modifications. The chance you will get this disease is now .004—that is, four in 1,000. The innoculation is only 25 percent effective—that is, it would reduce the risk to .003. What is the most you would pay for the innoculation in this case? (Again, you may borrow the money to pay.)*

> Risk Situation 3: *Some professors at a medical school are doing research on the disease described above. They are recruiting volunteers who would be required to expose themselves to a .001 (one chance in 1,000) risk of getting the disease. No innoculations would be available, so this would entail a .001 chance of death. The 20 volunteers from this audience who demand the least money will be taken. What is the least amount of*

[2] Daniel Ellsberg, "Risk, Ambiguity and the Savage Axioms," *Quarterly Journal of Economics* 75 (1961): 643-699.

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money you would require to participate in this experiment?

I have asked these questions to numerous groups. The typical median responses are that people would pay $800 in Situation 1; pay $250 in Situation 2; and charge $100,000 in Situation 3. Obviously, people treat these as three quite different questions. Yet economists would argue that the answers should all be about the same. (They would allow for a small difference between Situation 3 and the other two, but nothing like the magnitude observed.) Essentially each situation presents the subject with a choice between more money or a greater chance of living. If Situations 1 and 2 are compared, we can see that people will pay over three times as much to reduce a risk from .001 to zero than to reduce a risk from .004 to .003. While the increase in the chance of living is the same in each case, the change is more attractive in Situation 1 because the risk is eliminated altogether. Generally, people will pay more to eliminate a risk than to achieve an equivalent reduction of a risk. Daniel Kahneman and Amos Tversky call this the *certainty effect.*[3]

If we compare the responses to Situation 3 with those given to Situations 1 and 2, we see that the median response to Situation 3 is several times larger. Yet this implies that a typical individual would refuse to pay $5,000 to eliminate a risk, *and* would refuse to take $5,000 to accept the same risk. How can $5,000 be both better and worse than bearing some risk?

This comparison illustrates another behavioral regularity which I have called the *endowment effect.*[4] The endowment effect stipulates that an individual will demand much more money to give something up than he would be willing to pay to acquire it. The endowment effect can be observed in cases that do not involve any risk. Suppose you won a ticket to a sold-out concert that you would love to attend, and the ticket is priced at $15. Before the concert you are offered $50 for the ticket. Do you sell? Alternatively, suppose you won $50 in a lottery. Then, a few weeks later, you are offered a chance to buy a ticket to the same concert for $45. Do you buy? Many people say they would not sell for $50 in the first case and would not buy for $45 in the second case. Such responses are logically inconsistent.

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[3] Amos Tversky and Daniel Kahneman, "The Framing of Decisions and the Rationality of Choice," *Science* 211 (1981): 453-458.

[4] Richard Thaler, "Toward a Positive Theory of Consumer Choice," *Journal of Economic Behavior and Organization* 1 (1980): 39-60.

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Policy deceptions

These illusion can affect policy decisions in many ways. Take the endowment effect: Essentially it says that once people have something it is very hard to take it away. Residents of communities with declining school populations know how this has created problems for their school boards. People who would be unwilling to pay for a tax increase to add a school in their neighborhood nevertheless become incensed if an existing school in their neighborhood is closed in order to avoid a tax increase.

Similarly, most people know that when social security benefits were indexed, the formula used was inadvertently generous. The result has been that benefits have grown much faster than wages in recent years—clearly an unintended outcome. Nevertheless, any politician who dared to suggest a reduction in the rate at which benefits increase was considered an enemy of senior citizens. Just because it was a mistake to give people something does not mean it can be easily taken away. Even the most recent solution to this problem—a one-time postponement of cost of living increases for six months—is a curious sort of deception. We did not take anything away—we just postponed it!

An issue that is particularly interesting in the present context is nuclear power, the debate over which involves all of the illusions discussed so far. The specific question I wish to discuss is: Why is nuclear power so unpopular? I do not intend to evaluate the advantages and disadvantages of nuclear and conventional power plants, since I have no particular insights to offer. The question is why nuclear power generates so much vocal, emotional opposition. This *is* a puzzle, since the experts seem at least evenly divided. Yet how many demonstrations do we see opposing coal-fired plants? Surely it is not because conventional power sources are without risk to humans or to the environment. Coal mining accidents could be (but are not) attributed indirectly to coal-fired power plants. And acid rain is partly attributed to conventional power plants, but nuclear power is rarely suggested as a solution to the problems of acid rain. So why is nuclear power so unpopular? The four cognitive illusions each play a role:

Availability. As with homicide, the risks from nuclear power are widely publicized, while as with suicides, the risks from conventional sources are not as well known. The Three Mile Island incident and the popular movie *The China Syndrome* have helped keep the nuclear risks very "available," even though, so far as we know, there has not been a single death related to nuclear power.

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Complexity and Ambiguity. As with the Ellsberg urn, the risks from nuclear power are complex and ambiguous. People are not confident that they have been estimated correctly. Future risks, such as those related to waste disposal, are especially ambiguous. The Ellsberg effect shows that such risks are particularly aversive. (It is rather ironic that Ellsberg is now so active in the anti-nuclear power movement. Has he fallen into his own trap?)

The certainty effect and the endowment effect. The responses to the three risk situations demonstrated that people are least willing to pay to decrease an existing risk (Situation 2) and demand great compensation for the introduction of a new risk (Situation 3). The way the nuclear power issue is generally discussed, replacing a conventional power plant with a nuclear power plant would reduce an existing risk and add a new risk—the least attractive combination possible.

I am not saying that opposition to nuclear power is silly or irrational. Rather, I have just tried to show how four cognitive illusions all happen to be working to make nuclear power seem highly unattractive, which may help explain why opposition to nuclear power is so widespread.

There is a good book on optical illusions by Stanley Coren and Joan Girgus called *Seeing is Deceiving.* That title might be applied to thinking: Seeming is deceiving. But like optical illusions, cognitive illusions can be overcome. We can measure the height and width of the Gateway Arch; similarly, we can look in the almanac to find out how many homicides and suicides there are. Nevertheless, there is no practical way of preventing cognitive illusions from influencing policy decisions. Cognitive illusions influence representatives, senators, presidents—even so-called experts are not immune. A physicist may fall for a cognitive illusion just as easily as an economist might fall for an optical illusion. But since informed judgment and explicit analysis can in principle mitigate the effects of illusions, we must encourage the use of scientific research, cost-benefit and cost-effectiveness analyses, and expert commissions in the making of policy decisions.

Mirages

The second class of policy problems involves mirages. Rather than illusory objects, these mirages are illusory choices, choices we perceive that do not really exist.

Economists tell us that we should keep our options open, and

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that we should prefer having more choices to having fewer. This is good advice, like "buy low and sell high," but like all good advice it has exceptions. One exception would arise when the costs of deciding are exceptionally high, in which case any decision may be better than more costly pondering.

A second, more interesting, exception is illustrated by the following true story. A group of economists was sitting around having cocktails, awaiting the arrival of dinner. A large can of cashews was placed on the cocktail table, and within 90 seconds one half of the cashews were gone. A simple linear extrapolation would have predicted the total demise of the cashews and our appetites in another 90 seconds. Leaping into action, I grabbed the can and (while stealing a few more nuts on the way) hid it in the kitchen. Everyone seemed relieved, yet puzzled. How could removing the can, and thus removing a choice, have made us better off? Let us analyze this case with the help of the simple decision tree shown in Figure II.

At time 1 we have a decision: to leave the bowl or to remove it. If we remove the bowl, we have no further choices to make, and no more nuts to eat. We obtain Option C. If we leave the bowl, we must then decide how many more nuts to eat. Suppose we would most like to eat a few nuts (Option A) but that we would prefer to stop (Option C) rather than to end up eating the whole bowl (Option B). Given these preferences the rational thing would be to leave the bowl and pick Option A. But it is rational only so long as Option A is really feasible. At the dinner party, Option A was a mirage. As much as we might have liked at time 1 to eat only a few more nuts, at time 2 we would have devoured the whole can. If Option A *is* a mirage, then Option C becomes the rational choice. I will call taking Option C an act of *precommitment*: committing oneself to a particular choice in advance.

The first recorded act of precommitment was that taken by Ulysses in his encounter with the Sirens, a popular singing group in Ulysses's time whose songs were highly addictive. Anyone on the seas who heard their songs would feel compelled to draw ever nearer to land, inevitably crashing on the rocks near shore. Ulysses's strategy was to have himself tied to the mast so he could not alter the course of his ship.

Ulysses's method of dealing with the Sirens and my act of removing the cashews were both acts of *rational precommitment.* They both satisfy the two conditions that are necessary for precommitment to be rational: (1) a change of preferences is antici-

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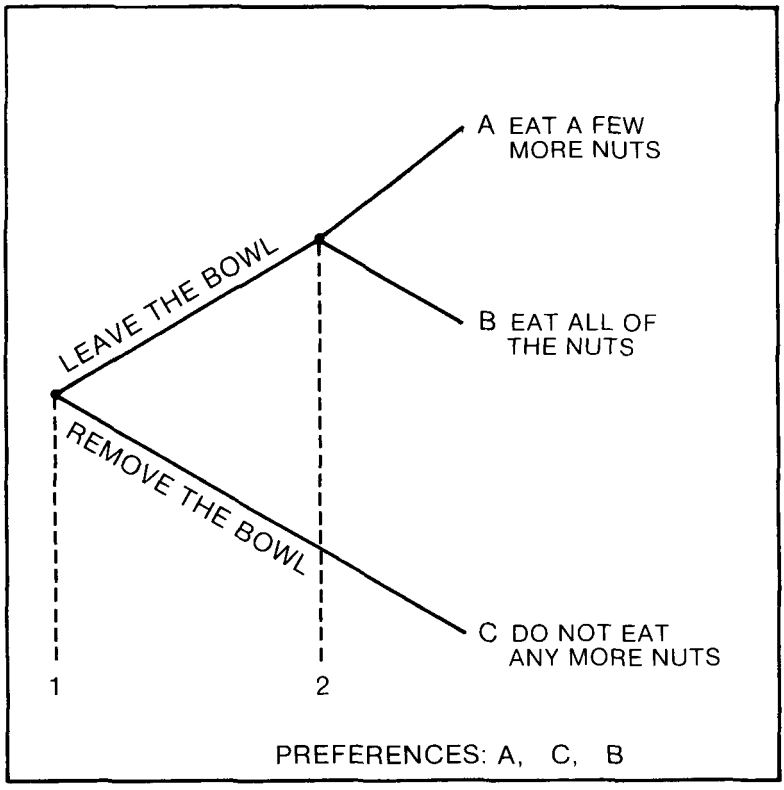
FIGURE II: *Cashew Nut Decision Tree.*



pated; and (2) the change will be for the worse. Ulysses knew that he would alter the course of his ship if he had the option, and that the change of course would be for the worse.

A common precommitment institution is the Christmas club. Christmas clubs have three distinguishing features: They pay little or no interest; they require weekly deposits at some inconvenience; and they do not allow the customer to withdraw any money before Thanksgiving. This institution clearly seems inefficient. But is it irrational? The decision tree in Figure III shows once again that C is a rational choice only if A is a mirage. But for individuals or families on a tight budget who would otherwise not save enough, a Christmas club could be rational. The fundamental point is that a rule (which is what a precommitment strategy is) must *necessarily* be crude and inflexible, and may also be inefficient. Nevertheless, these drawbacks, in and of themselves, should not lead us to the conclusion that a particular rule is undesirable. To evaluate a rule we must compare it with the alternatives. Normally a

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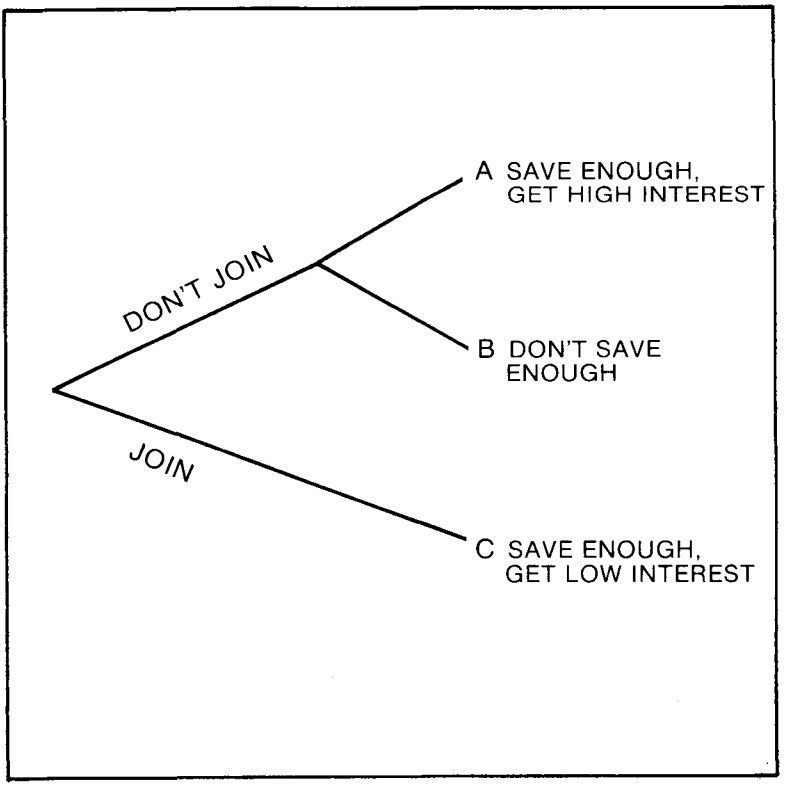
rule specifying that the captain of the ship may not alter the ship's course would be judged unacceptable. But for Ulysses, that rule was better than any other feasible alternative.

Public uses of precommitment

Rational precommitment is highly important in the domain of public policy. Take terrorism or airplane hijacking, for example: As all airline passengers know, we spend millions of dollars and countless hours of time screening airline passengers for bombs, guns, keys, lighters, and calculators. Film is ruined, people miss planes, and we all pay more for plane tickets. What do we gain from this? Since any security system can be beaten, planes are still occasionally hijacked. As an alternative to all the equipment I propose we adopt the following rule: "Never make concessions to hijackers." Hijackers would be given a choice: Give up or be shot. One might say, "Won't that be a dangerous rule? Won't many

FIGURE III: *Christmas Club Decision Tree.*



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innocent people be hurt or killed?" The answer is no. First, if no one ever gets anything from hijacking a plane, then the incidence will fall almost to zero. Second, there is no defense against a crazed terrorist. If someone wants to kill himself and a lot of other people he can do it, and we cannot stop him. Anyone can hijack a bus or blow up an office building at will.

A different criticism of this rule is that there might be situations in which society would want to make concessions. Suppose someone hijacks a caravan of school buses—would we not want to make concessions in this case? But such examples simply illustrate the value of the rule: If an exception is made for a school bus once, no school bus would ever be safe again. To enforce this rule we could decide now that anyone not personally at risk who grants a concession to a hijacker would be guilty of a felony. (A jail sentence would be mandatory, of course.)

Another example of rational precommitment is mandatory retirement. Mandatory retirement rules normally have two separate provisions. First, an organization will announce that it is under no obligation, moral or legal, to keep a worker past the age of 60 (or 65, or 70). One reason organizations adopt such a policy is that for most workers, though not all, productivity reaches its peak some time before retirement. Wages, on the other hand, usually rise throughout a worker's employment. These two factors together suggest that just before retirement most workers are earning more than they produce. Clearly a firm would not want to allow that state of affairs to go on indefinitely.[5]

The second provision, while not universal, frequently accompanies the first. It provides that no worker may remain employed after the normal retirement age; this might be called "mandatory mandatory retirement" (or MMR for short). Since the adoption of MMR eliminates some future options for an organization, it qualifies as precommitment. But is it rational? It is easy to criticize an MMR rule since it might force a university to lose a Nobel laureate who is still active. Nevertheless, I believe such rules make good sense because it is so difficult to tell anyone he is no longer productive. Thus the option to keep some people can, and will, become a practice of keeping almost anyone who wants to stay on. So for every Nobel laureate who is kept for an extra couple of years, the organization must retain several others who are no longer productive.

[5] See Edward Lazear, "Why Is There Mandatory Retirement?," *Journal of Political Economy* 87 (1979): 1261-1284.

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I am not advocating any particular age for mandatory retirement; clearly that should differ across jobs. What I do oppose is the recent federal law that declared mandatory retirement illegal for ages under 70. I believe this is an unnecessary and ill-advised intrusion into private organizations' affairs. In many cases these rules were arrived at through an explicit process of collective bargaining. The abolition of mandatory retirement is sometimes posed, improperly, as a civil rights issue. But old age is a state we all hope to attain. Young people benefit when mandatory retirement creates new openings, but those same young people will face those rules later. Mandatory retirement makes sense for some organizations, and they should be given the freedom to enforce their own rules.

The federal budget as dinner check

I would also encourage the federal government to impose some precommitment rules on itself, in particular fiscal caps such as Proposition 13 in California. Several proposed constitutional amendments would impose such rules on the federal government either by restricting future growth of spending to no more than the growth rate of real GNP, and/or by requiring a balanced federal budget. Such ideas are not new. In 1798 Thomas Jefferson wrote, "I wish it were possible to obtain a single amendment to our Constitution. I would be willing to depend on that alone for the reduction of the administration of our government to the genuine principles of its Constitution; I mean an additional article, taking from the government the power of borrowing."

Since these proposed amendments would greatly restrict the government's flexibility (though exceptions are made for declarations of war), it must be demonstrated that such precommitment would be rational. Though the growth in government's share of GNP in the last 55 years should be evidence enough, let me describe some of the mirages that led to this explosion.

Suppose we consider the behavior of a hypothetical group of 500 people going to an expensive restaurant for drinks and dinner. Compare their expected behavior under two different rules: Each person pays his own bill; or, the total bill is divided evenly. Under which rule will people spend more? The latter of course. If I order a shrimp cocktail for $5.00 and it is split 500 ways, I pay only one cent. I am more likely to order a shrimp cocktail at one cent than at $5.00. This "check-splitting effect" is what leads to so-called

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pork barrel legislation.[6] The amount a district will pay toward a particular local project can be very small indeed, so it is in the interest of every Representative to get as many projects into his district—just as it is my interest to order dessert if everyone else is chipping in.

Suppose the larger dinner party comes up with a clever idea: The check will still be divided evenly, but to save time, the ordering will be done by committee. There will be separate committees for drinks, appetizers, entrees, salads, and desserts. Each person can serve on the committee of his choice. How will people allocate themselves to committees? You guessed it—the lushes will be on the drinks committee, the vegetarians on salad committee, the sweet-tooths on the dessert committee, etc. (After all, we do want the people with expertise on the relevant committees.) Of course such an arrangement will exacerbate the tendency toward overordering. The lushes will have a bottle of wine with each course, the sweet-tooths two rounds of dessert, and if by chance a lush finds himself on the dessert committee we can be sure that rum cake will be served. Unfortunately, this metaphor closely resembles the structure of the U.S. Congress, where the committee process reinforces the tendency toward excessive spending.[7]

Suppose further that each of our diners can put his bill on a credit card—a special credit card that does not have to be paid if the diner loses his job or retires. This rounds out the story nicely. To a representative more concerned with getting re-elected than with posterity, "buy now, pay later (maybe)" is a very appealing process.

How can we control the budget? I advocate random committee assignments, but that is probably politically infeasible. Failing that, we need both a limit on the rate at which government spending can grow, and an enforced balanced budget.

Such rules have been criticized on numerous grounds: They are rightly described as crude and inflexible, and the definition of a balanced budget is far from obvious. Nonetheless, the spirit of such amendments is worth supporting, and the criticisms are not persuasive. The issue is not whether such rules are perfect, but rather whether they are an improvement over the current situation. As Richard Wagner and Robert Tollison recently wrote:

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[6] See James Buchanan and Gordon Tullock, *The Calculus of Consent* (Ann Arbor: University of Michigan Press, 1962).

[7] See William Niskanen, *Bureaucracy and Representative Government* (Chicago: Aldine-Atherton, 1971).

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Annual budget balance is a good idea because it places useful and meaningful constraints on political choice. This is not to say that it is a *perfect* rule for the conduct of government, for there are no perfect rules for the conduct of something as massive as our government. The problem is to search for feasible, workable rules that encourage political decision makers to act as if they had good common sense. A rule of annual budget balance and careful up-front monitoring of the viability of long-term government projects seems to be the wisest course of action.[8]

No thyself

By definition, precommitment must be done *in advance*, before we actually face temptation. We always resolve to go on a diet—next week. "Lord give me strength—but not now." So we should not be surprised to find that we, or our organizations, want to break rules that were established earlier, even if the rules are desirable. Indexation of the federal income tax is a good illustration of this principle.

Because we have a progressive income tax with marginal rates that increase with income, inflation automatically produces real tax increases. In 1981, Congress passed a law that instituted indexing of the personal income tax beginning in 1985. The way the law works, the personal exemption (now $1,000), the zero-tax bracket (now $3,400), and all other bracket levels would automatically rise with inflation. This would be particularly helpful to lower income families, since the brackets are much closer together at lower levels. Not surprisingly, some in Congress now want the law repealed. As Martin Feldstein, chairman of the President's Council of Economic Advisors, argues in a recent *Wall Street Journal*:

If tax revenue must be raised, the repeal of indexing isn't a satisfactory substitute for an explicit tax increase. Because the repeal of indexing is a *hidden* way of increasing taxes, it removes the pressure to choose between spending cuts and more taxes. And unlike voting an explicit tax increase, repealing indexing doesn't provide a fixed amount of additional tax revenues but starts a money machine that will squeeze more and more money from taxpayers in years ahead. The repeal of indexing is politically *tempting* to many in Congress because it increases revenue without explicitly increasing taxes. But it is the very opposite of responsible budgeting [emphasis added].

Feldstein's choice of language is quite apt. First, he describes

[8] Richard Wagner and Robert Tollison, Alvin Rabuska and John T. Noonan, Jr., *Balanced Budgets, Fiscal Responsibility and the Constitution* (Washington, D.C.: Cato Institute, 1982).

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the tax increases in the absence of indexation as *hidden.* This is right on target. To keep government spending under control we should want tax increases to be visible, not hidden. Second, he says the repeal of indexation would be *tempting* to Congress. Congress recognized its addiction to hidden tax increases and resolved to break the addiction—starting in four years. It is important that this resolution be kept. Indexation is particularly important in the absence of spending restrictions or a balanced budget amendment, since it will help keep government from growing.

My proposal can perhaps best be summarized in the dictum Thomas Schelling set down in these pages several years ago: "No Thyself." This is good advice for individuals, organizations, and governments. If we make rules to enforce the "no," we must remember that all rules are imperfect, and that they must not be lightly abandoned. Not even Ulysses could count on self-restraint.

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What does due process do?

DAVID L. KIRP & DONALD N. JENSEN

Among American social reformers, few instruments are so cherished as an individual's right to a fair hearing before government takes actions affecting him. Whether the good or service at stake be access to education, welfare, housing, disability payments, public employment, even a driver's license, the individual's interest in "having some say" is routinely recognized. Sometimes it is the courts, relying on the due process clause of the Constitution, that order these case-by-case determinations; indeed, the history of public law during the past decade and a half has been in no small part a history of expanding this procedural protection. But hearings are also required by statute. Scarcely any administrative action taken today may not be contested in a subsequent hearing.

This proceduralization of public policy is new. Historically, due process protections figured chiefly in criminal cases, insulating the accused from a too-vigilant state. Though the rapidly expanding reach of administrative government prompted Congress to adopt the Administrative Procedure Act in 1946, that law had little effect on agency life. Until the 1960s, government largesse was widely regarded as a privilege, not an entitlement, one to be distributed as public officials saw fit. Since there was no right to welfare or

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education or housing, the argument ran, government could make these available as it pleased. Beneficiaries were supplicants, not stakeholders.

The distinction between rights and privileges was largely undone in *Goldberg* v. *Kelly*, the 1970 Supreme Court decision which declared that a welfare recipient could not be stricken from the rolls until offered an opportunity to be heard. Since *Goldberg* the proceduralization of the bureaucracy has accelerated, and the reasons are readily discernible. For one thing, due process is an inherently constitutional idea, a way of protecting the basic aims of the Constitution, and in this law-driven society that gives it considerable authority. Procedural fairness also promises a kind of social justice. Due process is supposed to distinguish the deserving from the charlatan, functioning as a legal analog to the scientific method. In this way, it avoids injustice by minimizing both deprivation and misallocation of public resources. Moreover, the due process hearing invites those affected by official decisions to participate in deciding their own fates, and so treats the individual not as a passive creature but as someone who deserves respect.

The claim that due process promotes both efficient decision-making and a sense of personal efficacy occupies the high ground of policy discussion. Down in the trenches, the fighting has been over the fitness of bureaucrats and professionals to manage the client state. Those who advocate an expansion of procedural justice display an abiding distrust of standard operating procedures and professional canons. In the mind of the proceduralist, bureaucrats play favorites or, worse, systematically punish the powerless or the unpopular. Due process, the argument goes, forces officials to account publicly for their actions, and so keeps government in check.

These are not uncompelling arguments, at least in the abstract. The concept of individual responsibility, which is the foundation of due process, has its roots in classic liberalism. And proceduralism proposes to make government itself stronger: By flushing out official misdeeds, administrative behavior is rendered accountable to law, and deviations from the statutory license are subjected to continuing correction. There was just enough truth in the complaints about administrative government in the 1960s for serious attention to be paid. Who could deny that welfare departments occasionally harassed their clients with midnight bed-checks, that those living unconventional lives might be booted out of public housing, that public employees who criticized their colleagues sometimes put their jobs in jeopardy?

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How commonplace these horror stories were is a critical question, but one that largely went unasked. The debate over proceduralism has been an empty one because the debaters have so far refused to inquire closely into the likely effects of proceduralism; they have shared the belief that, for better or worse, a great deal of change would transpire. Critics of agency behavior insisted that bringing due process to public bureaus would radically reform the way these institutions do business. Defenders of bureaucratic discretion predicted chaos.

Defining "appropriate education"

By now, though, there is evidence in hand about the consequences of proceduralization, and while the evidence discussed here is drawn from one particular area—the education of the handicapped—the implications of that experience extend far beyond it. Policy toward the handicapped has been driven by a commitment to impose the norms and forms of law on the untidy system of American public education. The leading court case, *Pennsylvania Association for Retarded Children* v. *Commonwealth of Pennsylvania* (*PARC*), treats the right to a hearing in disputes over the schooling of handicapped youngsters as vital in guaranteeing that such children receive an "appropriate" education. The 1974 federal Education for All Handicapped Children Act faithfully follows this logic, turning the claims of the handicapped into legal rights and specifying an administrative regime of hearings and appeals within the schools to vindicate those rights. Special education in general, and the *PARC* history in particular, offer a splendid example of administrative proceduralism in action.[1]

What we learn from this experience strongly suggests that introducing hearings into public agencies is neither a godsend nor a disaster. The right to a hearing did play some part in convincing

[1] The *PARC* Consent Decree, signed on October 7, 1971, established the right of all retarded children in Pennsylvania to a free, appropriate public education. The settlement contained five major provisions: 1) The state had to develop a *C*ommonwealth *P*lan for *I*dentification, *L*ocation and *E*valuation of mentally retarded children to assure that previously excluded children would be found; 2) the state had to render to those retarded children an education resulting from "appropriate" diagnosis and placement; 3) children had to be placed in regular classes, where possible; 4) a due process system was established to resolve complaints about diagnosis and placement issues; 5) the party losing at these hearings would have a right to appeal. The court appointed two masters to oversee the agreement. A Right to Education Office in Harrisburg was given the responsibility of monitoring implementation of the decree.

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school officials that they should offer an education to all children, and that is clearly to the good. But "appropriate" education, the advocates' dream, has proved well beyond the reach of due process. Schools have learned to play by the new rules without much changing the ways in which they operate. By leaving a paper trail, they have satisfied the hearing officers and contained the potential threat of due process. The consequences of such containment have not been especially happy, however, either for the public agencies or for the children and their parents.

The *PARC* advocates hoped that the due process system would secure a vaguely-worded entitlement to an "appropriate education." The ultimate expectation reached beyond individualized justice; *PARC* hearings were also supposed to reshape the schools themselves. As Thomas Gilhool, one of the plaintiffs' attorneys, declared:

> For the first time in American education, a mechanism is created to assure that the educational program fits the child. The mere fact of a hearing opportunity . . . will of course keep all the field professionals on their toes. There is a new instrument of accountability. The right to a hearing creates an extraordinary forum for parents and their associations to express themselves, and to organize. *And it should transform education* [emphasis added].[2]

The procedural elements of *PARC* speak to this expectation. The due process system contemplates an administrative hearing run by an impartial hearing officer who bases decisions exclusively on evidence in the record and advances written justification. Appeals were supposed to ensure that the hearing officers would observe the procedural niceties, and to promote uniform outcomes in factually similar cases.

By itself, law cannot determine what education a handicapped child should receive; expert help is vital. Under *PARC*, deliberate deviations from legal formalism—most significantly, the decision that special education experts, not lawyers, would preside over the hearings—signaled that the best of the professional and legal traditions was to be preserved. Professionals would develop diagnoses and propose placements, for these were matters about which only experts could speak confidently. But the sorry history of special

[2] Quoted in Leopold Lippman and I. Ignacy Goldberg, *Right to Education: An Anatomy of the Pennsylvania Case and Its Implications for Children* (New York: Teachers College Press, 1973). See also Peter Kuriloff, David Kirp, and William Buss, *When Handicapped Children Go to Court: Assessing the Impact of the Legal Reform of Special Education in Pennsylvania*, Project No. Neg. -003-0192, Project on Student Classification and the Law (Washington, D.C.: National Institute of Education, 1979).

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education, a story of seriously retarded youngsters warehoused in impersonal residential institutions and black students dumped into dead-end classes for the retarded, indicated that professionalism alone would not protect the handicapped. Legally-rooted concerns for reliability were meant to ensure consistency in decisions concerning diagnosis and placement, while also tempering the interest (and self-interest) of the professionals. At the state level, lawyers would decide appeals by testing the hearing record against developed standards of decision, thereby establishing a precedent-based legal system. In this forum, the rule of law, suitably tamed by legitimate professional concerns, would come to Pennsylvania's schools.

School districts have the advantage

The reality has been more modest. There have been marked changes in the education of handicapped children in Pennsylvania since the *PARC* decree was issued. The proportion of school-age children getting special help has nearly doubled, and expenditures for special education have quadrupled. Bureaucratic changes made in the wake of *PARC*—establishing a Right to Education Office within the state Department of Education, creating monitoring devices, and coopting community groups—have had much to do with this change. By contrast, the impact of the due process hearing and appeal system has had relatively little impact. Hearings have been few in number—fewer than 500 have been held over a period of eleven years—and highly restricted in scope. The issues have concerned individuals, not the special education system, and have largely been settled by recourse to formula. Demands that would require substantial new expenditures or structural changes (requests for wholly new programs or claims concerning newly diagnosed handicaps, for instance) have been resisted. Not much has happened as a direct result of the hearings and appeals.

The questions taken up in these hearings have consistently centered on how children are labelled and how they are treated by the schools, with the battle lines drawn in familiar ways. Parents of mildly handicapped youngsters frequently resist the label "retardate" and seek placement for their children in ordinary classrooms, supplemented with special help; school systems prefer to treat such students as retarded, placing them in already-operating classes. With the seriously handicapped, controversy focuses not on the label to be applied but on what is to be done. Parents, fearing

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that the publicly-run program is inadequate, often prefer private placements, a preference that the public schools resist.

These disputes are nominally about education, though at a deeper level they reflect the conflicting needs of parents and public school systems. The schools' position has been driven by considerations of organizational maintenance and survival. While it would be nice to give each child what he truly needs, the knowledge and resources to accomplish this are not at hand. In assigning students, too much emphasis has often been placed on easily-administered IQ tests, at the expense of personal assessments drawing on a variety of courses; and for reasons of economy, assignments are made to existing programs, not newly-invented ones. Most districts are pressed for funds and have done only what they must in order to satisfy the legal mandate. Relatively few have gone further, to produce that individualized remedy, to which the *PARC* "appropriateness" standard aspires. Parents see their children's problems in a very different light. They concentrate on particular grievances, relying on their own observations of the children's behavior rather than on IQ tests to make their assessments of need and ability.

The very idea of due process in the schools was unsettling to teachers and counselors, many of whom regarded the law as an unwelcome intrusion into their lives. Yet they quickly accommodated themselves to the demands of a legalized proceeding. There is a growing tendency in school districts to rely on legal counsel at the hearings—in four out of every five cases, the schools retain lawyers. School districts, tutored by their attorneys, have discovered how to marshall evidence and use effective witnesses in making their case. Parents, by contrast, have used legal help less frequently; more often they have relied on professionals outside the school system, such as social workers, or have depended on laymen, friends, and neighbors.

The schools' tactics have proved highly successful. For a district to win, it has been enough to demonstrate that school personnel have followed normal evaluation and prescription procedures and have tried to place the child in the most normal setting possible. Adherence to the norms of the school, not individualized program design, has carried the day, and "appropriate" education has been equated with what is bureaucratically achievable. As schools learned this lesson, they have compiled a winning record: The schools won 62 percent of the cases during the first four years after *PARC*, and 96 percent of the cases in 1981.

The outcome of a due process hearing was supposed to reach

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beyond particular cases, but the cases are treated as highly individualized disputes. In one hearing, the parents' lawyer tried to introduce into the record a hearing officer's decision in a similar case, but the school district successfully resisted, contending that each case contained too many variables to make comparison useful. While a system of precedent has developed in recent years, its impact has been modest, for decisions are regularly reached on the narrowest possible grounds.

If proceduralism has made much difference at the school or classroom level, the impact has been indirect. Hearings take time and cost money, and this reality has prompted school districts to settle disagreements informally. Pre-hearing conferences—conversations, actually—were held throughout Pennsylvania until 1981, when the U.S. Department of Education vetoed the practice, calling it a violation of the due process rights of handicapped children. In the eyes of the federal bureaucrats, at least, due process and nonformalism are mutually exclusive. Such bargaining in the shadow of the law, simply aimed at resolving disputes between parents and school districts, may well have made more of a difference than the formal hearings themselves.

Real legalism

Those unhappy with the outcome of a due process hearing may ask Pennsylvania's Secretary of Education to review the matter. These appeals were intended to develop substantive entitlements and to regulate the conduct of the hearings. In this law-like system, the administrative appeal resembles a court of appeal reviewing a trial court decision. About forty cases are appealed every year, and the opinions in those cases have improved over time. Something akin to a system of precedent has begun to emerge as legalization takes root. Yet the precedents themselves do not offer much encouragement to the reformers. The message of the appeals decisions, as of the hearings, is that the meaning of "appropriate" education for handicapped children is determined by cost and program availability.

Appeals have concentrated on two issues: the implication of the *PARC* mandate that students be assigned to classes as close to the mainstream as possible; and the meaning of appropriate instruction. The *PARC* decree specified that, all things being equal, placement in a regular classroom was preferable to assignment to a special class, and that special-class placement was preferable to institu-

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tionalization. This "presumption of normality," as it has been termed, is a key element in *PARC*. It links principled opposition to segregation with a belief that distinguishing the handicapped from the ordinary school population is educationally damaging.

Initially, though, this bias in favor of normalized treatment did not sway the opinion-writers. In one case, a child was recommended for placement in a class of trainable retardates solely on the basis of one IQ test, and her parents wanted her placed in a regular classroom. Although the parents introduced evidence that the child's medication may have depressed her test performance, and then demonstrated substantial improvement upon retesting, the Secretary of Education was unmoved: "While we wish that Ramona would be able to participate successfully in the program for the educable mentally retarded [a higher classification], we cannot permit such a placement before she is ready to handle it—a premature placement would hurt her development. . . ." In another case, the hearing officer proposed keeping the child in a regular classroom in order to avoid the stigma of special treatment—the very value underlying the presumption of normality—while also offering supplementary instruction. When the district appealed, the Secretary of Education reversed this decision, finding that the IQ score did provide the district with a basis for assigning the student to the class for educable retardates. The concern over stigma was dismissed out of hand, and where the presumption of normality should have been in effect, it counted not at all.

The "appropriateness" slogan is meant to bring legal and professional concerns together. In theory, professional expertise would permit hearing officers to reach accurate diagnoses and placement decisions, while legal standards applied in the course of review would ensure that similarly-diagnosed pupils were treated similarly. This expectation, it turns out, postulates a higher level of professional knowledge and consensus than actually exists. Professionals simply cannot agree on what constitutes an accurate diagnosis or what a child's needs might include, let alone concur about the proper pedagogical strategy.

The appeals decisions themselves mirror this confusion. They do not specify which elements of handicap are crucial to the diagnoses and how these elements are to be ascertained; consequently, two radically different diagnoses of a child could—and often do—withstand review. Law-like review, unable to resolve differences within and among the professions, has failed to secure consistency.

This is not a mere legal quibble. The very thing that is wrong

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with so many of these opinions, their seeming arbitrariness, constitutes a challenge to the capacity of the appeals process to do its job: namely, offering guidance to concerned parents and school officials. Those cases concerning diagnosis and placement do not offer that guidance. The fault does not lie with the opinion-writers, for the problem is deeper: The due process system, embedded in the educational bureaucracy, is being pressed to answer questions to which, in truth, there are no answers—or at least no answers that an adversarial hearing is likely to turn up.

The real meaning of an appropriate education now depends on what resources are available, as appeals opinions pay heed to a school district's capacity to fund the sought-after program. In one appeal, for instance, the Secretary of Education admits that the ideal program would address both the child's retardation and his brain injury: "However, when such specialized programs are not available or are economically impracticable, the hearing officer must determine which *existing* program would benefit the child most." And in another case, the Secretary declared that a school district need not offer the best education possible, but only a program that satisfies *minimum* educational standards. Despite the stress on rights in the *PARC* decree, the hearings and appeals rely on cost and bureaucratic considerations, balancing rights against resources in a fashion seldomly seen in judicial opinions. This may well be sensible policy, but it is not what the advocates anticipated.

Legal and bureaucratic values now dominate the *PARC* due process system. Legalization is evident in the appeals, which frequently concern such procedural points as the admissibility of evidence and the timeliness of the appeals, and in the hearings, which have taken on the character of adversarial proceedings; the result is a system of decision in which professional wisdom has only a residual place. The hearing officer who is supposed to bring expert insight is hampered by an administrative rule granting less discretion than is available to a judge.

This system is profoundly conservative in its operation. It has proved incapable of adapting to the range of disputes arising in the education of the handicapped; instead, justice is increasingly routinized. Most hearings and appeals speak to the similar issues, and because these issues do not greatly affect school practice, parents' rare victories can be implemented without organizational disruption.

When novel issues are posed by groups of parents, the *PARC* administrative apparatus has been unresponsive, for the hearings

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do not contemplate "class action" justice. Frustrated parents have taken their grievances elsewhere, usually back to the federal courts that ordered the *PARC* regime into operation. This re-judicialization has increased in recent years as the *PARC* system has grown more calcified, further diminishing the importance of *PARC*-mandated administrative review.

Judicial second-guessing

The *PARC* decision left the meaning of an "appropriate" education to be determined on a hearing-by-hearing basis. Such autonomy for the schools, comparable to that traditionally accorded to federal administrative agencies under the Administrative Procedure Act, was supposed to permit this new system to mature and develop its own expertise. But judges have been impatient with the schools, and a series of decisions have subjected the *PARC* regime to continuing and searching review. The cases focus on new claimants for special help and on the quality of services that handicapped youngsters receive under *PARC*; they have also challenged the usefulness of the due process system itself. As a result of these opinions, administrative due process is not a self-contained enterprise, but is instead routinely subject to federal judicial second-guessing.

The chief challenge to the *PARC* due process system, *Fialkowski* v. *Shapp*, was brought on behalf of multiply-handicapped children. The Fialkowskis had contested the school district's proposed placement at a hearing and lost. Skipping the administrative appeal, they marched into federal court and won. Because the Fialkowskis wanted not only a better education but also money damages from school officials, who allegedly had deprived them of their constitutional rights, the court heard the case—as indeed it had to, for only courts can award damages in such instances. This legal right undermined *PARC*: An unhappy parent can bypass the administrative process entirely, turning what *PARC* anticipated would be settled within the bureaucracy into a constitutional cause. Going to court has major drawbacks, cost foremost among them, but the courts are nonetheless an attractive option for many parents, since the chance of winning there is much greater than inside the bureaucracy. Should reliance on the courts become commonplace, at least for the major policy questions, the administrative due process system would regularly be upstaged, with only the most mundane matters left for hearing officers to decide.

The *PARC* opinion did not foresee this development. Although

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PARC's procedural protections prevent handicapped pupils from being totally excluded from *school*, *Fialkowski* concludes that they do not prevent children from being totally denied an *education*. The due process system had equated state certification requirements with an "appropriate" education, an approach, according to the court, that ignores what actually happens to children. "The exhaustion of state remedies by these plaintiffs is likely to be futile," the decision concludes, since the due process system can neither determine appropriate treatment nor order money damages.

Other post-*PARC* court cases have also rewritten the rules of the game. *Frederick L.* v. *Thomas* explicitly derided the value of the due process protections. In that suit, a class action filed on behalf of children with specific learning disabilities, Pennsylvania contended that *PARC*-like due process hearings would "make the program for identifying learning disabled children fully effective." The court was unpersuaded. Even if the hearings were well-run the system would still be defective, the court pronounced, because due process unfairly burdens parents by obliging them to recognize the disability, then demand that the school respond to it. Since there is a right to receive treatment, the court concluded, parents should not have to demonstrate the disability; instead, the state was required to institute a system designed to search out the learning-disabled. It is hard to imagine a harsher comment on the efficacy of due process in the context of special education. Although the *Frederick L.* opinion speaks only about the learning-disabled, the line of argument is readily applied to other types of handicap. If it is unfair to expect parents to seize the initiative in the one instance, why is it not equally unfair in the other?

The fact the courts can order remedies for entire classes, not just for individuals, also has powerful implications for the viability of the *PARC* regime. In *Armstrong* v. *Kline*, a federal judge required school officials to provide seriously handicapped youngsters with year-round instruction, reasoning that otherwise they would regress in the summer. The state's plea—that it could not afford to do so—left the court unmoved. And *Armstrong* has not been cheap to implement: In 1981, Pennsylvania spent $1.5 million for a summer program offered to 4500 pupils.

Even supposedly routine cases sometimes wind up in court. In *Tokarcik* v. *Forest Hills School District*, a federal judge ordered that the school provide clean intermittent catheterization (CIG) for a child afflicted with spina bifida, as a service related to the child's education. The particulars of *Tokarcik* matter less than the court's

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view of a its own role as an "external check" on the *PARC* due process system. This conception differs from the spirit of *PARC*, which left decisions about educational placement to a procedurally- and professionally-minded educational bureaucracy. The fact that federal judges are now willing to oversee the outcome of hearings like Amber Tokarcik's means that the judiciary is inclined to intervene in the *PARC* system whenever it sees fit.

In Pennsylvania, where the handicapped rights revolution began, the cumulative effect of judicial activity has been profound. Court opinions have influenced the nature and scope of *PARC*'s coverage, giving a new direction to special education. No special education policy or practice, whether routine or profound, is now immune from judicial review.

The re-entry of the courts into the special education arena suggests that the judges recognize that the administrative hearing process, originally intended as a substitute for judicial review, cannot adequately fulfill that function. *PARC* hearings can settle standard special education disputes concerning individual students, such as the provision of transportation and the review of requests for private school placement. But substantial structural changes in educational practice, or controversies concerning a large class of students, lie far beyond the capacity of the due process mechanism.

Under *PARC*, fidelity to law has become transformed into legalism, overly rigid adherence to precedent, and mechanical application of rules, without continuing attention being paid to the purposes behind those rules. Hearings and appeals emphasize procedural issues, not educational ones, and technicalities often carry the day. This legalism hampers the school system's capacity to take new interests and new circumstances into account.

The emergence of the due process regime in Pennsylvania has lessened the importance of the administrative hearing as a way of securing educational entitlements. Hearings settle familiar disputes and air petty complaints, but the major controversies wind up either in the courts or the state legislature. The growing tendency for unhappy Pennsylvania parents to go to court, despite the costs, reflects deep disenchantment with the due process system, and suggests how problematic it is to legalize the bureaucracy.

The national experience

As Pennsylvania went, so went the nation: After the *PARC* decision, 36 cases seeking the process protections for handicapped

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children were filed in 21 states. In 1975, responding to pressure from advocates' groups and financially-strapped states, Congress passed the Education for All Handicapped Children Act, which borrowed *PARC*'s procedural requirements almost verbatim. In Washington as in Harrisburg, spokesmen for the handicapped declared that the due process hearings would ensure school district compliance with the law and offer a forum for individuals' grievances. "We thought that the law would be self-enforcing," a spokesman for the Council for Exceptional Children recalled, "because people could enforce it from the local level."

This has not happened. Studies in Massachusetts and California, as well as a nation-wide sampling of school districts, tell a consistent story: Due process hearings have not accomplished the hoped-for miracle, and have produced some unhappy, unanticipated side-effects.[3] Patchy evidence suggests that few hearings have been held. A national sample of 22 sites found that seven had held one hearing, only four had managed more than one. Massachusetts, which had adopted its own "right to education" law in 1973, had about 60 hearings per year between 1974 and 1979. And in California just 278 hearings were held during 1978-79, affecting only .08 percent of the state's special education population. (A fraction of one percent is a tiny number, but by itself it does not tell us much. By comparison, the Immigration and Naturalization Service held hearings for .02 percent of its 700,000 applications, and disgruntled welfare recipients appeal only 2 percent of the time.) Nationally, as in Pennsylvania, hearings may have changed the ways in which schools do business, either for the better—by inviting parents to talk informally about their children's education—or for the worse—by adopting a defensive, legalistic posture.

The expectation was that due process hearings would revolutionize public education. The reality has been that hearings are most frequently requested by middle-class parents who have pulled out of the public schools, and who seek public dollars for private schooling. Four-fifths of the California hearings, for instance, focus on this issue. In special education, as in life, opportunities theoretically

[3] See Richard A. Weatherley, *Reforming Special Education: Policy Implementation from State Level to Street Level* (Cambridge MA: MIT Press, 1979); Jane L. David and David Greene, "Organizational Barriers to Full Implementation of P.L. 94-142," and Michael W. Kirst and Kay A. Bertken, "Due Process Hearings in Special Education," in Jay G. Chambers and William T. Hartman, eds., *Special Education Policies: Their History, Implementation, and Finance* (Philadelphia: Temple University Press, 1983), pp. 115-168; and M. Budoff and A. Orenstein, "Special Education Appeals Hearings" (unpublished manuscript, 1979).

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available to all are mostly used by those people who need them least.

The hearings themselves have been dominated by the legalism that has surfaced in Pennsylvania. Lawyers are everywhere. School personnel regard the hearings as expensive, time-consuming, and a threat to their professional judgment and skill. The private school placements that many parents seek are enormously costly; and directors of special education programs interviewed in Massachusetts think these parents are trying to "rip off" the school system, taking money from the children who remain in the public schools. They also complain about inconsistencies from one hearing to the next in determining what education is "appropriate."

Those school districts that have held a number of hearings have developed an array of defensive strategies. There are reports of districts tape-recording supposedly informal conferences, tightening administrative procedures, and narrowly interpreting their legal obligations to provide "education and related services." Elsewhere, districts have negotiated extra services with parents who dropped the threat of a hearing; sometimes school districts use the threat of a hearing to force parents into accepting what the school proposes.

The fact that the possibility of a hearing may be relied on to silence parents reveals that parents are not so contentious as might be thought. Those who participate in hearings often feel themselves blamed either as bad parents or as troublemakers. One mother interviewed in a Massachusetts study reported: "I've been through seizures and everything else with [my handicapped daughter] and this has been the worst affair of my life. It's been hell—absolute hell." Hearings, which were meant to give individuals a sense of mastery, instead provide a stage on which long-term unhappinesses between parents and schools can be played out to a new audience.

"Due process romanticism"

Skepticism about the virtues of procedural justice is not new. In a splendid study of New Haven's petty criminal courts, Malcolm Feeley discovered that it was not the pain of penalty but instead the process itself that constituted the punishment.[4] Years earlier, Joel Handler reviewed Wisconsin's hearing-ridden welfare system and concluded that the so-called "new property" in welfare, buttressed by the right to a hearing, did not have much practical mean-

[4] Malcolm A. Feeley, *The Process is the Punishment: Handling Cases in a Lower Criminal Court* (New York: Russell Sage, 1979).

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ing. Whatever the law said, the system still held the trumps; welfare recipients had to come hat in hand to the social workers.[5]

The tale of special education has a similar conclusion. Due process hearings cannot assure good education or even consistent outcomes; instead, they degenerate into law-ridden affairs that often upset the participants, and, thanks to the federal bureaucrats' interpretation of the law, undermine the possibility of fruitful discussion. A decade or so ago, a different ending might well have been written. At a time when handicapped children were being denied even the rudiments of education, court decisions such as *PARC* put this issue on the policy agenda, and the right to a hearing might have concentrated the attention of local school officials. By now, though, the message has largely been heard. Public officials support the values underlying *PARC* and the federal legislation: that the handicapped are entitled to an education, that consistent and accurate diagnoses be made, that placements be as suitable as possible (given resource constraints), and as integrated as possible. In Pennsylvania and elsewhere, state agencies committed to these values monitor special education programs. It appears that the quality of special programs has much less to do with whether parents press their due process rights than with state legislation or voluntarily-enacted reforms promoted by educators themselves.

Today, the real threat to the quality of education offered to handicapped children comes not from unfair procedures but from cutbacks in funding. The federal appropriation for handicapped education has declined in real terms since 1980. At the state level, too, money is scarce. In Harrisburg, legislators who for a decade had poured substantial funds into special education now propose limiting private school tuition payments and cutting back on special school personnel. In the only Supreme Court decision interpreting the Education for All Handicapped Children Act (*Board of Education* v. *Rowley*), Justice Rehnquist gave the Court's blessing to a stricter cost accounting. The purpose of the law, Rehnquist wrote, is "more to open the door of public education to handicapped children . . . than to guarantee any particular level of education when once inside," for Congress was most concerned with establishing a "floor of opportunity" for each child. The sentiment that handicapped youngsters receive too much of a now-shrinking education pie is widely expressed these days.

[5] Joel Handler, "Controlling Official Behavior in Welfare Administration," *California Law Review* 54 (1966): 479.

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Due process hearings seem neither necessary nor adequate to meet the continuing concerns of those attentive to the interests of the handicapped. Yet the allure of due process remains strong, as the Reagan administration learned last year when it proposed limiting the right to a hearing, only to beat a quick retreat in the fare of 20,000 letters of objection.

However the fate of proceduralism in the schools is resolved when Congress next takes up the Education for All Handicapped Children Act, due process will clearly not revolutionize education. A new institutional style and better educational decisions are harder to secure by force of law than seemed possible in what Tom Gilhool, the plaintiff's lawyers in the *PARC* case, now calls the era of "due process romanticism." The great danger of fixating on process is the trivialization of substantive rights, as hearings divert attention from the harder and far more vital task of offering the handicapped an education that society can afford. In this context, procedural justice may be to justice as military music is to music.

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Prison violence and the paradox of reform

KATHLEEN ENGEL & STANLEY ROTHMAN

MEN'S prisons across the country are besieged with violence. Inmate murders in state prisons alone left 450 inmates dead in 1972 and 1973 (the most recent period for which complete figures are available); indeed, death by murder is more common in prison than on the outside. Since the mid-1960s, correctional facilities have had substantial increases in inmate rapes and murders, with the number of victims peaking in the 1970s. Paradoxically, the rise in violence paralleled the growth of the prison reform movement, and escalated as rehabilitative policies became standard correctional practice and as the courts abandoned their "hands-off" doctrine in prisoners' rights cases. Thus, at the very time our prisons were being designed to be more humanitarian, they were becoming worse. Whereas at one time prisoners had to fear possible brutality by prison guards, today the chief perpetrators of violence against prisoners are other prisoners.

Prisoner against prisoner

The realities of today's prisons are grim indeed. What might be called the "inmate social system" offers a new prisoner several roles: He can attempt to avoid violent encounters, and thus be labelled

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weak and live in fear; he can join a gang and receive protection, and in so doing risk his life in inter-gang disputes; or he can "marry" an inmate leader and thereby be protected in exchange for submitting to periodic rapes. Or he can try to fend for himself. Whatever course an inmate chooses, he quickly learns that most guards will not protect him from the aggressive inmates who run the prison. It used to be the case that rebellious inmates suffered more than passive inmates; now, in most prisons, the less rebellious, non-aggressive inmates face the greatest abuses.

Many prisons are no longer ruled by authoritarian administrators, but rather by inmate leaders who exploit other prisoners. These inmate leaders use violence to enforce their authority, and weaker inmates, afraid of being knifed, beaten, or killed, readily conform. The greatest threat to the unaffiliated inmate is the violent gang whose members engage in rape and assault. A slight to a gang member can be fatal since gangs often seek revenge when a member has been insulted. Gangs have also been known to band together to assault and rape weaker inmates.

The emergence of inmate leaders who use violence as a means of control is widespread in American prisons, primarily in areas and institutions where liberal reform policies have been adopted. In New York, some of the toughest convicts rule the prisons, attacking and raping less aggressive inmates without retribution. Louisiana's Angola Prison has been the site of "heated arms race among the prisoners. . . . Individual disputes, gang wars and factional feuding kept the blood flowing incessantly, keeping the concrete floors stained despite daily mopping." [1]

Rape, by individuals and gangs, is a primary form of domination in the prison, and it is usually the young newcomers who are the victims. They may be offered special benefits such as protection or cigarettes in exchange for submission; in other cases stabbing, beating, and starving convince inmates to submit. Philadelphia District Attorney Specter has said that almost any man with a slight build is confronted sexually soon after his arrival in prison. Although there is no correlation between race and sexual aggression, whites are disproportionately the victims of inmate rape. In fact, for the most part, gang rapes are committed by lower class blacks against middle class whites.[2] If an inmate reports a rape, he risks another,

[1] William Stevens, "Vivid Portrayals of Prison Life Bring Recognition to Two Inmates," *New York Times* (March 7, 1980): 26.
[2] Peter C. Buffum, *Homosexuality in Prisons* (Washington, D.C.: United States Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, 1972), pp. 22-23.

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perhaps more violent, attack. Guards do not protect inmates and often ridicule rape victims. The only safe way to report a rape and still prevent further attacks is voluntarily to enter a solitary confinement cell.

Do institutional factors make a difference?

The conventional wisdom attributes today's prison violence to institutional factors such as overcrowding, poor conditions, unenlightened officials, and unqualified, untrained employees. Although these factors may influence the rate of assault in prisons, we cannot ignore the fact that most prisoners, both black and white, are incarcerated because they are deviant or dangerous, and that many were violent prior to entering correctional facilities.

It is true that most prison guards are white, come from rural backgrounds, and are relatively uneducated. It is also true, however, that prison guards have *never* been well-educated or trained. For decades, prisons were severely overcrowded and intolerable, and until a short time ago many inmates were subjected to arbitrary physical abuse and various forms of torture. That these conditions once existed to a far greater extent than they do today calls much of the conventional wisdom into question. As Barton Ingraham points out, prison violence has occurred in the absence of grievances.

In New Mexico, for example, where 33 inmates were killed in one of the worst prison rebellions in history, officials mandated policies and implemented programs designed to curtail violence. Since the violence was attributed to overcrowding, underpaid and unsophisticated guards, poor security, and inmate idleness, the new policies addressed these issues. Guards were given a 35 percent pay increase and were sent to training academies. The inmate population was decreased by 500, leaving 650 inmates and about 200 guards. The inmate-to-staff ratio was just over three to one, while the national average was five to one. Inmate activities were expanded to include five hours of scheduled activities, plus exercise time for inmates in maximum security housing. The prison administrators also made provisions to comply with standards for educational, recreational, and legal programs, food services, and medical care. Despite these programs, nine inmates and two guards were killed in less than a year following the riot.

Racial tension between guards and inmates—and among inmates—is often cited as a cause of prison violence, yet at the Vienna Cor-

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rectional Facility in Illinois there has been little or no violence despite the fact that at least half of the inmates are black, and the majority of correctional officers are white and from conservative areas of Southern Illinois. At the New Mexico prison, 80 to 90 percent of the guards were Hispanic at the time of the riot, and the population was primarily Hispanic. Thus, the institution that should have the most tension, because of a lack of minority representation on the staff, was not violent. On the other hand, the prison with high minority representation *was* plagued with violence. Thus, it is not evident that white guards increase the rate of violence or that minority guards reduce it.[3]

This is not to argue that the factors conventionally used to explain prison violence are without importance. Some of those central to conventional wisdom, as well as the changing nature of inmates and the types of crimes they have committed, undoubtedly affect the level of prison violence. And the changing racial composition of prisons has resulted in rather dramatic increases in violence. Furthermore, decarceration of nonviolent offenders, and a growing tendency for the prison population to consist of inmates convicted of more violent crimes, also add to internal tension and violence.

It is also possible that the reform movement of the 1960s and 1970s has itself increased the level of prison violence. Although few people studying this problem directly acknowledge a correlation between reform efforts and the rise in violence, many authors have alluded to the possibility that such a connection does exist. The reform movement ushered in changes which were both attitudinal and substantive, and which affected every aspect of prison life. Guards, inmates, and administrators assumed new roles. Programs and policies were changed to complement the new rehabilitative philosophy. Outsiders—the media, politicians, and activists—swarmed to the prisons. And, finally, the courts abandoned the "hands-off" doctrine in prisoners' cases. The actual intervention of so many people, programs, attitudes, and policies served to disrupt the traditional order in prisons. The interventions, however, were more than temporary disruptions; they changed the very nature of prisons, prisoners, and internal social dynamics.

[3] If it is not simply the physical conditions that determine behavior, an important factor may well be the overall inmate compositions and the inmates themselves. At Vienna, the inmates (some of whom are murderers) have been put together in prison because they are considered good risks. Certainly, this has played a more significant role in reducing violence than the lack of minority staff has played in promoting violence.

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American prisons before reform

The latest reform period in prison administration gathered steam just after World War II as legislators, under the influence of social scientists, began to mandate indeterminate sentencing and an emphasis on rehabilitative, rather than punitive, measures in prisons. Concurrently, there was a subtle change in the power dynamics of the prison. The new dispensation allowed some inmate authority, but overall control remained in the hands of the administration. Though the inmates were subjected to a more lenient regime, they never lost sight of the authority of the administrators and guards.

The inmate code was rigid and strictly followed by almost all inmates. The central dictum was to be loyal to the other cons, which meant no "ratting," no arguments, and no taking advantage of other inmates. Courage and strength were important, and though fighting was violative of the inmate code, retreating was equally repugnant. The final rule was that guards and authorities were not to be trusted.

Loyalty was the key factor in maintaining stability. As Gresham Sykes observed: "a cohesive population of prisoners provides a system of shared, group-supported beliefs and values which will tend to curb forms of behavior, such as sexual perversion [and] useless insurrections which bring only retaliation."[4] Inmates shared the few material goods they had and exchanged confidences. Inmate groups were highly integrated, maintaining solidarity and loyalty.

An inmate elite once functioned to control inmate behavior that could divert the prison routine. The powerful prisoners knew that the way to maintain power was to make sure that custodial goals were secured. Because the inmate elite had the same goal—security—as prison personnel, it is not surprising that Richard McCleary found highly repressive prisons, where one might expect the most rebellions, to be marked by inmate conformity.[5]

The racial tensions that are often at the center of violent incidents in prisons today were not overtly present in the earlier prisons. In part this is because, when a prison is extremely rigid, racial tensions are less important than inmate solidarity in face of oppression. It could also be that the practice of segregation reduced opportunities for racial hostilities. Although racial conflicts did not

[4] Gresham Sykes, *The Society of Captives* (Princeton, NJ: Princeton University Press, 1978), p. 108.

[5] Richard McCleery, "Communication Patterns as Bases of Systems of Authority and Power," in *Theoretical Studies in Social Organization of the Prison*, Richard Cloward et al., eds. (New York: Social Science Research Council, 1960), p. 56.

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surface among inmates, many guards used violence much more frequently against black prisoners than white prisoners.

The rules for inmate conduct evolved when administrators, recognizing the difficulties posed in trying to monitor prison populations, allowed inmates some tacit control in regulating the behavior of the population. During this period, prisons were relatively stable as inmates maintained a separate social system that opposed the administration and supported inmate solidarity. The inmates, however, were not autonomous. They were members of one group with a set of norms and practices. Loyalty to the group was the esssential ingredient for stability and for keeping the administration at a distance. When incidents occurred that were beyond inmate control, the administration would step in. In essence, the inmate social system, when operating free from interference, served the purposes of a security force—there was little violence, and a stable, peaceful regime and population. Administrators did not rescind all power; rather, they intervened when necessary and retained their position as the ultimate authorities.

Crushing inmate solidarity

However, this stability proved to be temporary, as the expansion of rehabilitative programs eventually brought about extensive changes in the attitudes of both prisoners and authorities. The social structure, the "inmate code," and power-sharing bargains were drastically altered, and the implicit and explicit understandings of authority were soon redefined. As these reforms restructured the prison, violence escalated.

In the 1960s and 1970s, liberalized programs and regulations were introduced and a new attitude of respect was extended to prisoners. Rather than rigid authoritarian rule, administrators began listening to inmates and implementing less restrictive policies regarding mobility, communication, and security. Specific programs geared to encourage responsible inmate behavior and to ameliorate staff-inmate tensions were also developed.

In the pre-reform prison, knowledge and influence determined one's position in the inmate hierarchy. Those who had been in prison for a long time or who had access to information through a prison job held the power. As Charles E. Silberman recently wrote, "since power is the supreme virtue in prison, other inmates attached themselves to these leaders, paying tribute in money, goods, sex or simply respect, in return for protection. Their large followings, in

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turn, gave inmate leaders considerable influence over inmate behavior."

This control by the inmate elites changed when the wardens, trained in the rehabilitative school, brought new policies to the prison that took this implicit power away from the elites. The new wardens explained rule changes, informed inmates of policies, and generally maintained a clear channel of communication. This change in the dissemination of information caused a redistribution of power and, although it destroyed the corruptive power of the inmate elite, it brought on new tensions. One of the difficulties that arose, as Richard McCleery found in his study of a Hawaiian prison, was that new inmates, who no longer depended on the inmates who had been in the system for long periods of time for information, "declared their independence from the old leadership and embarked on a radical course of exploitation and trouble-making."

Prior to the reforms, complex relationships among inmates of various racial, ethnic, and regional backgrounds contributed to the maintenance of order and inmate solidarity. With the advent of the reforms, this order slowly broke down and inmates were divided along racial and ethnic lines. Militancy and separatism among minority groups on the outside spread to the prisons, leading to separatism on the part of minority inmates, and alienation among white prisoners. Leo Carroll, in his study of an eastern correctional institution, describes the relationship of the reforms to changes in inmate solidarity:

> Fragmentation of white prisoners may be attributable to the policy of humanitarian reform. In lessening deprivation and the power of custodians, the reforms removed the major impetus to convict solidarity. Further, the increased permeability of the prison as a result of the reforms facilitates the continued attachment of prisoners to external reference groups. The result is an aggregation of individuals having little sense of loyalty to others beyond their immediate associates and exhibiting diverse behavioral orientations that have their origin and support both within and outside the prison.[6]

The problems arising from the changes in the social structure of the prison have been compounded by policies that allow for physical mobility, permitting inmates greater unsupervised interaction and thus increasing opportunities for rapes and assaults. In 1977 the Minnesota State Prison at Stillwater began allowing inmates to visit one another until late in the evening. This is one of many

[6] Leo Carroll, *Hacks, Blacks and Cons* (Lexington, MA: Lexington Books, 1974), p. 89.

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policies that were initiated as part of a reform movement that limited the rule of the warden. Although the warden at Stillwater was sympathetic to the goal of these changes, Richard Kwartler reports that "by relinquishing some of his power, . . . he forced some of the weaker inmates to fend for themselves. . . . Domination by the benevolent despot warden has been replaced by an environment that permits inmates to hurt each other more than they should." The warden stated that the openness of the Stillwater Prison would scare him if he were an inmate there. The increase in violence as a result of greater mobility is not limited to inmate-on-inmate violence, but includes higher suicide rates, which the warden felt were due to the tension and instability in an open prison, where weaker inmates are easy targets for aggressive inmate leaders.

Power sharing

In some institutions, the reforms went beyond the attitudinal change among administrators. Rather than simply give inmates greater freedom, administrators soon developed inmate councils that had explicit power in the management, control, and decision-making processes of the prison. These programs were designed to be democratic, but were not always in the best interest of inmates. Inmate politicians often would take control and dominate the rest of the population. At the Stateville Prison in Illinois, an inmate council known as ABLE (Adult Basic Learning Experience) was introduced to increase communication between staff and inmates regarding inmate grievances. Six of the eight inmate representatives were from gangs. Thus, the gangs always dominated ABLE. The goal of the project—to share authority with gang leaders—was an unstable strategy because the lives of non-members were placed at greater risk.

Dr. Don Hardesty, a prison psychologist at the Kansas State Penitentiary, observed that the new power dynamics have encouraged violence and racketeering. Describing the situation at the prison he stated that: "Enforcers and strong-arm men are the order of the day. The better inmates and the weaker inmates become easy prey for the inmate structure, which operates principally on the basis of threat and fear." He concludes that even extremely authoritarian prisons are probably less dangerous than prisons where inmates are given the control.

This phenomenon is not unique to Stateville or to the Kansas State Penitentiary. Although the goal of inmate councils has been to in-

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crease communication between staff and inmates (and among inmates) in order to temper internal tensions, such councils soon develop into partisan groups representing the interests of the dominant or aggressive inmates. And it is the weaker, less aggressive inmate who is victimized by the breakdown of authority.

In an effort to reduce violence, a new superintendent at the Soledad Prison in California offered inmates participatory roles in the running of the prison. Inmates held positions of authority on a board designed to mediate inmate grievances and, ultimately, to reduce violence. After two years the superintendent found that gangs were not as strong and that peer pressure had brought a reduction in violence. This optimism was premature; shortly thereafter, in December of 1975, two inmates were killed and several others injured when the "Mexican Mafia" attacked a group of white inmates. Peace was restored and the superintendent reported that the incident served to further the goal of nonviolence among the inmates. Despite their efforts to reduce assaults, the inmates at Soledad obviously were not completely successful. Furthermore, to say that the death of two inmates at the hands of a gang will "further the goal of nonviolence" is to deny that one inmate who does not believe in non-violence can victimize many. It is not surprising, when considering the long-term effects of the reform movement, to find that California—the vanguard of the reform movement—has one of the most violent prison systems in the country. Between 1970 and 1974 alone, there were eighty inmates and eleven guards killed and 494 stabbings in California prisons.

New "rites" to freedom

Like rehabilitation, the prisoners' rights movement involved both explicit and implicit changes in prisons. Specific rights were granted to inmates during this period, including the right to uncensored correspondence from attorneys, the right to practice one's religion, and various procedural and substantive rights to due process. With the abandonment of the "hands-off" doctrine, courts and lawyers, as well as political activists, began playing increasingly important roles in prison reform. The movement was more than the mere extension of certain rights to prisoners; it was the interaction of many forces with diverse results and implications. Certainly, the increased rights afforded inmates was one aspect of court involvement. Another was the rising militancy and assertiveness within the prison population. Inmates no longer sit idly "doing time"; in-

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stead, according to Leonard Orland, they have "developed an incredible legal sensitivity—a virtual obsession with 'the law' and with any real or potential violation of . . . [their] rights."

The overall surge of legal activism among prisoners is primarily attributable to the efforts of the Black Muslims who used the courts to challenge prison regulations that restricted their rights to religious practice. The movement among Black Muslims gained ground in the late 1960s when a series of court cases permitted them to subscribe to their newspaper, to have provisions made for their diet, to correspond with leaders (including those with criminal records), to meet with ministers, and to congregate at religious services. Although Black Muslims have maintained a commitment to non-violent separatism, their collective identity served as a model for groups of prisoners and led to factionalism along racial lines. And as a result of these cases, inmates became more aware of the courts as a means to act upon their grievances.

During the mid-1960s, when prisoners' rights were redefined by the courts, many expressed concern that inmates would abuse authorities, knowing that officials would be restricted by court decisions regulating disciplinary actions. These observers saw legal activism as a threat to traditional authority structures and predicted that the decay of institutional authority would result in increased violence. And indeed the loss of custodial power today *is* the result of humanitarian reforms and court decisions. Several court cases, which granted inmates certain rights to unlimited, uncensored communication and visitation, may have helped gangs inside the prisons maintain control, because now they can preserve their ties with affiliated gang members outside the prison. The extension of these rights contributed to the strength of the gangs, thus increasing the probability of violence.

Keith Butler claims that because prisoners have been guaranteed the right to practice their religion, many inmates use the chapel services "to foment disorder, or to exchange drugs, or to have homosexual trysts." Groups of prisoners have found that the best way to gain privileges in prison is by declaring that they are a religious group. This permits gangs special protections and facilitates their efforts to control the inmate population.

Researchers have also found that by extending prisoners' rights to due process, access to the courts, and communication with certain people free of censorship, the courts have granted inmates powerful tools to use against prison administrators. While these rights have sometimes led to overall improvement in prison condi-

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tions, often they have resulted in increased violence. As inmates are given more rights, freedom, and privileges within an institution, they begin to expect constant improvements. When improvements do not materialize, the inmates often resort to violence to force concessions.

Radical changes in the prisons following court decisions may have made prison life more tolerable for some, but at the same time they opened up avenues for assault, rape, and murder. In fact, Barton Ingraham claims that court involvement may actually have sparked, rather than suppressed, prison violence. And Charles E. Silberman, looking retrospectively at the effects of law suits on prison disorganization, identifies a trend of continued exploitation of prisoners despite the policies to protect them. The role of many inmates as the victims of repression remains the same, only the oppressor has changed:

> Prison rights suits have served to protect inmates from their keepers; but in tandem with a host of other changes within and without prison walls, they have left inmates more vulnerable to intimidation and brutality on the part of other inmates.[7]

Some scholars question whether inmates have really gained any substantial rights. Nonetheless, the movement for increased rights has had a tremendous effect on the prison: It has politicized and "legalized" prisoners. Although few petitions filed by prisoners reach the courts, writ writers and general legal activity have changed the nature of prisons and created new "rites" to freedom.

Politics comes over the wall

Influences outside the prison have also affected the prisons. The direct influence of political activists who adopted prisons as an issue, and the less direct influence of changing public attitudes regarding race, civil rights, and prisoners' rights, have changed prisoners' views of themselves and of their position in society. Since the late 1960s the public, the media, and political officials have focused on prisons as "a crucial social problem." The increased media attention given to prisoners has contributed to their militancy and, ultimately, to violence. Inmates are not unaware of the media's interest in prison issues and often use the media to force concessions. The media play two roles. First, they are the means through which inmates can assert their grievances. Second, they

[7] Charles E. Silberman, *Criminal Violence, Criminal Justice* (New York: Random House, 1978), pp. 387-88.

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are the channel which keeps the public up-to-date on prison systems and penology. In fact, inmates have learned these roles from the media. As Jack Brent has found, inmates have been influenced by outside political activity and "are more likely to have new identities connected with some social or political issue. Also, they are more likely . . . to be aware of how the role is played through countless examples from the papers, television, radio or word of mouth." [8]

The attitude toward prisoners in the 1960s was that they were people like everyone else, but whose life chances had been reduced. In fact, some believed that all prisoners were good people who would not be in prison had they been given due process and other rights. This radical ideology supported the notion that all prisoners are political prisoners. To some groups, the prison was seen as "another manifestation of the oppression of poor and nonwhite people by the exploitative capitalist society." They saw the prison as the issue, and prisoners' rights and the law as the tools, for "the revolution." Radical spokesmen often considered prisoners superior to themselves, and prison staff were viewed as the lowest of humanity. This new political identity along with the new understanding of the law increased inmates' belief that they were victims of an unjust legal system. Since many journalists are themselves quite liberal, at least some have been willing to give more weight to the complaints of prisoners than to the explanations of guards or prison administrators.

Some radicals condoned inmate violence against authorities. There were more attacks against guards during the prison movement than at any other time in the history of American prisons. A silent defiance among prisoners had always existed, but the silence broke with the reforms. John Irwin, attributing the violence against guards to the political activities of the 1960s, noted that at Soledad, "while the outside organizational activities accelerated, the violence between prisoners and guards increased."

Guards and administrators in the middle

Inmates are not the only people victimized by violent prisoners. In fact, guards and administrators are often the victims of physical

[8] Jack E. Brent, "Tension Management and Organizational Activism: Toward a Preventive Medicine for Prison Riots," in *Prevention of Violence in Correctional Institutions,* Criminal Justice Monograph (Washington, D.C.: United States Department of Justice, Law Enforcement Assistance Administration, June, 1973), p. 5.

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abuse and psychological and political power plays carried out by inmates. Since the onset of the reform movement, prison personnel have had to struggle to maintain order while faced with few workable systems of control.

Guards, who once ensured security and order, are victimized today by the shift in control and by the ambiguity over their proper roles. They no longer know what is expected of them, and many are nostalgic for the "old days" when they understood the demands and expectations of the job. James Jacobs and Harold Retsky write that guards are sent mixed messages to "relax and act spontaneously. Inmates are to be understood, not blamed, and formal disciplinary mechanisms should be triggered as infrequently as possible." If guards followed this mandate, they would not be in a position to exert control when necessary. When guards now need to employ stern measures to maintain security or to protect inmates from one another, they lack both power and respect. Ultimately, they fail either to ensure the inmates' safety or to assist in rehabilitation. Furthermore, those guards who try to give individual attention to encourage rehabilitation leave themselves "open to charges of gross bias, discrimination and injustice." [9]

Guards are often caught in the middle of administrative recalcitrance to inflict punishment. At times, guards will report a disciplinary violation only to have it revoked by the warden who does not want to create unrest. Leo Carroll writes that some officers:

> seek to secure compliance by means of friendship, overlooking infractions and providing highly desired information to inmates. Their behavior is not so much a repudiation of the goal of custodial control as it is an attempt to maintain order, and at the same time to protect themselves, in the face of institutional changes that have made order more difficult to maintain and their position more vulnerable.[10]

Guards may ignore or even assist inmates in activities that violate prison rules, in exchange for promises to comply with regulations or for good behavior and quality work at jobs.

Charles E. Silberman points out that procedural guarantees extended to prisoners create disciplinary obstacles for guards, since granting an inmate a hearing "implies that a guard can be wrong and an inmate right; it conveys an implicit promise that an inmate can refuse a guard's order or challenge his veracity and get away with it." Certainly, once a guard has been found guilty of imposing

[9] James Jacobs and Harold Retsky, "Prison Guard," *Urban Life* 4 (April, 1975): 8.

[10] Carroll, *Hacks, Blacks and Cons*, p. 59.

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an unfair punishment, it is doubtful that inmates will respect the guard's power in future disputes.

Administrators have also been extremely vulnerable since the emergence of the rehabilitative era. They must balance prisoners' human rights against their right to be free from harm by other prisoners. And administrators must implement rehabilitative and court-ordered reforms while struggling to maintain security. As ideas about inmates' rights have gained ascendancy—within the courts, prisons, and public opinion—administrators have become impotent. Corrections departments fear the publicity that accompanies inmate suits, often succumbing to inmate demands rather than face the exposure, time, and cost of litigation, and the imminent threat of violence, The inmates, aware of the administration's acquiescence, demand more. Articulate inmates, who have learned the radical jargon, often serve as spokesmen for entire prison populations. When these inmates have made their grievances public, their statements and arguments are more articulate than those of the administrators, which makes the public view prison personnel as inept and incapable of running the institutions for which they are responsible.

Guards and administrators also face charges of racism. In the past, prison personnel did openly discriminate against blacks; as the courts have placed restrictions on these practices, they have been somewhat curtailed. However, this has not led to a decrease in the allegations that guards and administrators are racists. Indeed, court activism has actually led to an *increase* in discrimination cases. Guards who are alarmed about rapes in the prison are afraid to call attention to the issue because they fear charges of racism if they report a high incidence of rapes committed by blacks against whites.

A right to safe incarceration

The ideology of the rehabilitative movement was based on two premises: that inmates were sick and could be cured with proper treatment; and that by giving inmates rights and privileges they would become productive and responsible. Part of the treatment was geared to help inmates retain a sense of integrity and self-worth. Reformers tried to achieve this goal by reducing the distance between security personnel and inmates. Administrators, too, were advised to be more open with inmates and more willing to hear their grievances. The contradiction of roles—that of friend and

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guard, equal and superior—created both psychological and managerial problems for those involved.

The overall effects of the reform movement have been the dissolution of the inmate social order and heightened violence. This was certainly not the intention of most of those who initiated the reforms. Rather, these stemmed from a failure to recognize that the commitment to reform does not alone guarantee beneficial results. And the frightening truth may be, as David Rothman put it, that the reformers did "less to upgrade dismal conditions than they did to create nightmares of their own."

The argument that the reforms of the 1960s and 1970s are responsible for the increase in prison violence is not a recommendation for a return to the old system; although prisons once had less inmate violence, they were certainly not free of oppressive forces. In fact, because administrators operated autonomously with little judicial oversight or legislative inquiry, prisoners were often denied legitimate rights and were discriminated against. Guards exercised a great deal of control and could easily punish inmates by preventing them from seeing lawyers, placing them in solitary or maximum confinement, or revoking their "good time." Such actions were rarely reviewed by administrators, who allowed guards almost complete autonomy.

We cannot turn back the clock, nor would we wish to. A new generation of reformers is now suggesting that part of the answer to prison violence may lie in decarceration of nonviolent offenders, much smaller prisons, higher staff-to-prisoner ratios, a well-trained staff, and meaningful vocational programs. Given our current economic situation and the increased difficulty of locating prisons—partly because of the well-publicized violence within their walls—it seems unlikely that the public will provide the resources for such programs in the near future.

So we should be forewarned that reducing violence in prisons is likely to be a difficult task and should be approached cautiously. While we must allow prisoners to retain their human rights, we must remember, as Roger Starr has pointed out, that prisoners also have the "right to be protected from each other."

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Employment Quotas for Women?

JAMES P. SCANLAN

IN *Equal Employment Opportunity Commission* v. *American Telephone and Telegraph Company* (1977), a federal appeals court upheld the constitutionality of race and gender-conscious employment quotas in a much-publicized consent decree. Although no party had addressed whether affirmative action remedies that may be legal for minorities would necessarily also be legal for women, the court gave the issue passing attention. After briefly discussing the constitutional principles whereby gender classification are subject to a lower standard of judicial scrutiny than are racial classifications, the court concluded: "The present classifications are permissible in the case of race, and are thus permissible *a fortiori* with respect to sex."

This has been the only court decision to touch upon a possible difference in the constitutional analyses of employment quotas for minorities and those for women. The court's view that quotas for women were subject to less careful scrutiny—that is, could be justified by a less important governmental interest—clearly accorded with prevailing constitutional law. In arriving so easily at its conclusion, however, the court apparently did not consider whether there may be material differences in the ways various governmental interests are served by employment quotas for each type of group. Yet, because of substantial differences in the relationships among members of minority groups and those among women, certain important governmental interests that are served by quotas benefiting members of minority groups are served not at all by quotas benefiting women. Consequently, even though certain justifications of quotas may apply equally in either case, the ultimate determination of the appropriateness of most employment quotas is necessarily more difficult when the quota is for women.

There are two kinds of employment quotas. "Preventive quotas," which require that members of a certain group be selected in the same proportion they comprise of the relevant labor pool, seek merely to ensure future non-discrimination, not to remedy past discrimination. While such quotas may raise difficult issues of their

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own, their appropriateness is unaffected by whether the group is minority or female.

Most court-imposed employment quotas, however, are "enhanced quotas," which seek not only to ensure future non-discrimination, but to make up for the past as well. For example, assume that a particular race or gender group comprises 20 percent of the labor force from which an employer hires, but due to past discrimination that group comprises only 10 percent of the employer's work force. As a remedy a court might require the employer to hire the previously excluded group at a rate something in excess of 20 percent (say, 40 percent) for a certain number of years or until the group comprises a designated figure closer to 20 percent of the employer's work force.

The purpose of such remedies has been variously stated as "the correction of the effects of past discrimination" or "the accelerated elimination of underutilization." In plainer English, it is to integrate the work force faster than would be achieved if discrimination simply ceased. The AT&T decree was (in large part) such a remedy, as have been most of the other employment quotas upheld by the courts. In another context, the minority contractor set-aside in federally-funded construction projects upheld by the Supreme Court in *Fullilove* v. *Klutznick* (1980) is the same sort of quota, since the 10 percent reserved for minorities is considerably higher than the minority proportion of competitively-qualified bidders for such projects.

Two features of enhanced quotas are critical here. First, because they call for persons of the benefited group to comprise a greater proportion of selections than of the pool, such quotas necessarily require a preference. The gradations of skills among persons qualified to perform a particular job will determine the extent to which the preference involves selecting a less-qualified over a more-qualified candidate; in any case, however, persons who ordinarily would not be selected are selected over persons who ordinarily would be. Second, the persons who are benefited by the preferences generally are not persons who were victims of the employer's discrimination. These features raise a difficult question: Does it make sense to prefer persons not themselves victims of discrimination to make up for the discrimination against other members of their group?

The answer may depend on whether those involved are minorities or women. It is, of course, simply unfair to make either race or sex the basis for preferring a person who is not a victim of the employer's discrimination over another. If this apparent individual unfairness is to be justified, the justification must be found in the way the quota serves larger social purposes. And, because the individual unfairness affects persons in very serious ways, those purposes must be sound and important. There are a number of plausible justifications which have been or could be asserted in support of enhanced employment quotas. Not all of them, however, apply to such quotas for women.

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Consider two important social purposes that may be served by favoring a member of a minority group because other members of that group have been discriminated against. Because these purposes depend on the economic interrelatedness of members of the group, they do not apply to women.

Reparations. Only in Justice Stevens's dissent in the *Fullilove* case has an enhanced quota benefiting minorities been specifically discussed in terms of reparations for past wrongs. Notwithstanding the limited attention to such a theory in the courts, it deserves emphasis simply because it is the country's history of racial injustice, and the collective guilt associated with it, that have created the climate in which it is possible to subordinate the interests of the majority to those of an underprivileged minority.

One need hardly belabor that history to make the disadvantages borne by whites as a result of all the affirmative action programs ever implemented seem, while not inconsequential to those affected, of exceedingly limited scope. Still, legally or morally, why is it fair to recompense some people for what happened to other members of their group? One answer is: because minorities not themselves victims of discrimination experience concrete and substantial economic harm as a direct consequence of discrimination against other members of their minority group.

This might happen in three ways. First, the economic circumstances of minorities have been affected by discrimination against past generations of their groups which prevented them from accumulating wealth, as well as the advantages associated with wealth, to pass on to later generations. Second, minorities have been economically deprived because discrimination against their parents affected the manner in which those parents could raise their children. Third, minorities are disadvantaged by present discrimination against other members of their group because relatives, mates, friends—all persons with whom one might share economic circumstances or to whom one might turn for assistance—tend overwhelmingly to be from the same group.

Whatever weight one gives these factors in justifying the compensating of blacks or other minority group members for discrimination against other members of their group, not one of them offers similar justification for compensating some women for injustices to other women. Women unquestionably have experienced a history of discrimination and subjugation. But they are not harmed by discrimination against other women in the same ways minorities are harmed by discrimintion against other members of their minority group.

Discrimination against past generations of women has deprived many women of the opportunity to accumulate wealth that would have been passed on to their descendants; the economic circumstances of female descendants, however, are no more affected than are those of male descendants. Often women also have experienced relatively deprived childhoods because of discrimination against their mothers, particularly when the mother was the principal or

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sole wage earner; but male children experienced similar deprivation.

Nor do women tend to be harmed economically by present discrimination against other women. Even single women have approximately as many male as female relatives. Thus there is no reason to believe their economic circumstances are more harmed than helped by discrimination against other women. Married women —and marriage is the relationship in which adults engage in the most significant sharing of economic circumstances—clearly tend to be more benefited economically by discrimination against other women than harmed by it. Thus, according married women who are not themselves victims of discrimination preferences in order to make up for discrimination against other women seems particularly inappropriate. Yet, given that a substantial majority of the female labor force is or has been married, with an enhanced quota this anomaly can be expected to occur with considerable frequency.

Mitigation of poverty. Government has a legitimate role in alleviating the poverty associated with unemployment and low-paying jobs. Enhanced employment quotas may change the race or gender composition of groups in those circumstances; they do not create new or better jobs. They can thus alleviate the poverty existing in society only if the consequences of low income and unemployment are more serious when these conditions are concentrated within certain groups. Such consequences are more serious when the group is a minority; they are not when the group is women.

If a minority group is disproportionately unemployed or relegated to low-paying jobs, that is a more serious situation than if unemployment and low-paying jobs were equally distributed among all groups. First, it makes more extreme the circumstances of unemployed or low-paid individuals because the persons whose economic circumstances touch them in some way tend to be similarly disadvantaged. Second, the concentration of economic disadvantage in a close-knit community can lead to a general demoralization of that community. In the case of blacks, diminishing the concentration of low-paying jobs and unemployment in an interrelated group and mitigating the poverty associated with such jobs and unemployment, enhanced employment quotas can serve a legitimate and important social purpose warranting serious consideration in the evaluation of the wisdom and fairness of such remedies for minority groups.

The situation is different with women. They too are disproportionately relegated to low-paying jobs (unemployment is less a factor). But they are not more affected by the economic circumstances of other women than by those of men; in fact they are less so. Nor do significant numbers of women live together in communities with the compounded debilitating consequences of impoverished minority communities.

Even though these implications of the concentration of economic disadvantage do not apply to women, the concentration of low-paying jobs among women necessarily concentrates them among

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the neediest group in society. Almost six million women comprise the overwhelming majority (almost 90 percent) of single working parents, all of whom have child care obligations and expenses but no spouse to assist personally or to contribute an additional income. Since government has a legitimate role in alleviating extreme need, the situation of such persons warrants its attention, and assuring that they have well-paying jobs is one possible response. But single working parents comprise only 12 percent of all working women. Thus, even if their special needs could justify preferential treatment in the job market, they would provide scant justification for enhanced quotas primarily benefiting the much larger group of working women not in similar need.

Thus, whatever weight one accords to the fact that consequences of economic disadvantage are exacerbated when concentrated in a minority group to justify enhanced quotas, similar considerations do not apply to such quotas for women.

Finally, even if either of the foregoing justifications did in some way apply to quota remedies for women, it would have less force in supporting such measures for women than for minorities simply because the remedies for women would be less effective. There are obvious transgenerational effects of efforts to redress injuries to some minority persons by compensating other members of their minority group, or to abate the concentration of poverty in a minority group. However, because women have roughly as many male as female heirs in the next generation (and rather more in the same generation), such efforts for women have no similar effects. The process must begin anew for each generation.

CERTAIN arguments that are independent of the economic effects of discrimination against other persons might also be used to justify enhanced employment quotas. In principle, these apply to minorities and women alike.

Indirect benefits of integration. An integrated work force may provide role models for previously excluded groups and the amelioration of discriminatory environments. Also, certain occupations with power and influence, such as government and the media, may improve their ability to justly and effectively serve society if they are integrated. These considerations provide some justification for enhanced quotas to achieve that integration as soon as possible.

In most respects these considerations apply equally to quotas for women and for minorities. (There are exceptions: For example, the argument that a racially integrated police force can more effectively control a minority community has no apparent counterpart for women, although there may be other benefits of having substantial numbers of women in such highly visible positions of authority.) But while these considerations may carry considerable weight in particular contexts and with regard to the most powerful and influential positions in society, they do not alone justify the general availability of enhanced quotas for any group.

Rough justice. There is one argument which might be asserted

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for the general availability of enhanced quotas for both minorities and women. It can be argued that minorities and women who were not the victims of discrimination at the hands of that employer were probably victims of discrimination at the hands of another employer. Thus the relief simply achieves rough justice for individual members of the group. In principle, this justification applies equally to enhanced quotas for minorities and women.

Although the argument has not been seen in the courts, it has practical appeal. Few question the fairness of subordinating the interests of third parties to make employers recompense identified victims of discrimination. Why then should relief be denied simply because it is impossible to match all the victims with the particular jobs from which they have been excluded?

The argument has certain difficulties, however. Even regarding minorities and women who have been in the labor market for some time, many may question the assumption that most beneficiaries of preferences have in fact been victims of some employer's discrimination. More significant, persons just entering the job market tend to benefit disproportionately from enhanced quotas. They have not faced employment discrimination in the past and they have prospects for equal treatment materially different from those of minorities and women entering the labor market a decade ago. Hence, if the rough justice rationale is sufficient to support enhanced quotas for any group, it would seem that the preferences involved in such quotas should go to persons who have been in the labor market for some time. In the common situations where an employer is permitted to meet his quota obligations primarily by hiring persons just entering the job market, few of whom have seriously suffered from employment discrimination, rough justice is not served.

These considerations should lead courts and policy-makers to consider carefully whether the approach they take to preferences for minorities ought to be carried over to similar measures for women. There is, however, another side to this matter. In *Connecticut* v. *Teal*, the Supreme Court recently faced the issue known in employment discrimination law as the "bottom-line defense." Under this defense, an employer would be permitted to use in a selection process a non-job-related element with a discriminatory impact —for example, a test which disproportionately disqualified minorities or a height requirement which disproportionately disqualified women—as long as the employer nevertheless selected enough persons from the affected group so that the overall selection rate was nondiscriminatory. In effect, the defense would permit employers to use selection criteria which discriminate against certain members of a group, usually the most disadvantaged ones, as long as they make up for it by favoring other members of the group. By a five-to-four vote the Supreme Court rejected the bottom-line defense, at least where the discriminatory element in the process is an absolute barrier to further consideration. (The issue

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remains alive where the discriminatory element is only accorded a certain weight.)

With respect to minorities there is this to be said for the bottom-line defense: Whatever the impact of the discriminatory devices on certain members of a group, the employer's satisfactory bottom-line performance does tend to elevate the economic status of the group, and thereby even benefit the persons disqualified by the device. That these ends are served in a remote and unsatisfactory manner and at the expense of individuals' rights to be considered without regard to race-related characteristics is one reason why, at best, the bottom-line represents a severely flawed form of expedient justice. But at least it makes theoretical sense as a means of alleviating the concentration of poverty within an economically-interrelated group, while sparing employers the cost of ensuring the job-relatedness of their selection procedures.

But because women are not more affected by the economic circumstances of other women, any more than they are by the economic circumstances of men, the bottom-line defense does not make even theoretical sense for women. A minority denied a position because of a discriminatory test may derive some indirect economic benefit if a minority who passed the test is hired; a woman 5′3″ derives no similar benefit if a woman 5′7″ is hired in her place. A woman must be treated fairly as an individual, for, in economic terms, that is the only form of justice that affects her.

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Learning to Say "No" to the Press

MICHAEL A. LEDEEN

ONE day during the Lebanese war last summer, I got a telephone call from a leading television journalist. "How can it be," I was asked, "that Begin and Sharon are continuing to bomb Beirut after everything we've put on television?" I speculated that perhaps Begin's policy was not based on American evening news broadcasts, but this hardly slowed my interrogator. "But look at the pictures," the journalist said. "They're going world wide."

The journalist had a point, of course. After the systematic distortion of the war by the media throughout the West, the subsequent public outcry against the Israelis ensured that strategic considerations in Jerusalem would be tempered by political concerns. Afterwards, it would be sagely observed that no democracy can wage war anymore as war is supposed to be waged, unless it stumbles into a lucky situation—like the Falklands, where the British were able to keep the journalists out or under military control.

What is not so widely recognized is that war, as Clausewitz noted in a different context, is simply a special case of politics. Every morning in Washington our leaders begin their day by reading a Press Summary (prepared separately by each department, by the way). That this generally precedes the reading of the classified Intelligence Summary speaks volumes about the power of the press, for it is the Press Summary, for the most part, that will establish the problems that the government will address during the next dozen hours.

THUS the media have truly become the Fourth Estate, an integral part of the daily functioning of the government, and the leading practitioners—both in the media and in the older branches of government—know it full well. Journalists often have better access to leading government officials than do their immediate subordinates, close friends, and even the immediate members of their families.[1] The elevation of the media has by now become a commonplace, but neither the causes nor consequences of modern jour-

[1] Stephen Lesher, *Media Unbound* (Boston: Houghton Mifflin, 1982).

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nalism's power have been well explained. While journalists in earlier generations made just as many mistakes as our modern exemplars, there were so many different newspapers that the impact of the printed word was much less powerful than that of the highly centralized television network; thus, the political weight of the media was tolerable. Today, presidents and cabinet secretaries must spend an inordinate amount of time making certain that the media are not in open conflict with them.

The very nature of this problem points to the basis of media power. Just as the Third Estate earned its formal rights when it demonstrated an ability to destroy leading members of the other two Estates, so the media entered their current golden age after impressively creating and destroying a series of national leaders. The first to fall was President Johnson, the victim of Walter Cronkite's shift to opposition against the Vietnam War. Then came President Nixon in Watergate; then President Carter was first created and subsequently destroyed by the Washington press corps.[2] The media had demonstrated that they possessed the power to kill a politician; henceforth they would play a major role in defining the rules of the political game in Washington. And since the 1960s, the Fourth Estate has taken on all the trappings of other elite institutions; high salaries, luxurious perks, status, top billing on the society pages. And like all other *nouveau riche* classes, the media have brought along with them a new style and a new mythology to protect their privileges.

THE media's mythology generally derives from the First Amendment, which in the interpretation the journalists insist upon means license to say almost anything about almost anyone, regardless of the cost and the standards of evidence applied. The current version of the First Amendment gives the media all the prerogatives of a secret intelligence agency: They decide what constitutes evidence, they protect (or expose) the nature of their sources and methods, they decide when to pay for information, and they carefully control the declassification procedures to suit their own interests. We are quickly discovering that there is no Freedom of Information Act for the media; they want the government's secrets to be accessible to them, but their own secrets are to be withheld from the public. When the executive branch wishes to protect itself against inquiries, it invokes "executive privilege," arguing that it cannot conduct its business unless certain things remain secret. The media use precisely the same argument, claiming that the revelation of sources and methods would have a "chilling" effect on freedom of the press, access to sources, and the like.

Like the executive branch, the media invoke the national interest on behalf of their own desires. That there is a substantial difference in the legitimacy of their respective claims—no one elected

[2] Michael Jay Robinson, "A Statesman is a Dead Politician," in Elie Abel, ed., *What's News* (San Francisco: Institute for Contemporary Studies, 1981).

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a newsman to uphold and defend the Constitution—is often forgotten by First Amendment advocates. Indeed, as my story of the journalist during the Lebanese war shows, many of the current stars fully believe that *they* should define the national agenda (and surveys published by Stanley Rothman and S. Robert Lichter in *Public Opinion* magazine in 1981 bear this out).[3]

The new power of the media comes from the centralization of their operations and the remarkable ideological coherence of their leading practitioners. Many students of media like to claim that there is a real difference between the content of television news and that of newspapers and magazines. Perhaps so; certainly printed media are able to do more serious analyses. But in practice it is one big fraternity, and the members define each other's tasks: The morning news programs are almost always based on the first editions of the *Washington Post*, the *New York Times*, and, to a lesser extent, the *Wall Street Journal*. That is why the government's morning News Summaries lay out much of the day's activities: The journalists in town will be following up on these stories, developing different angles on them, and so forth. And government officials will be trying to get the best possible treatment by the time of the evening news broadcasts.

So in practice, the news business in the United States (and throughout the Western world, for American "news" defines a goodly part of foreign news organizations' copy as well) is the product of the three networks and the two or three big newspapers. And while one may argue that there is plenty of competition among the network news organizations, this is competition for viewers and is based on style; the content does not vary as much as one would predict.

THE surprising uniformity of network news is often granted and usually explained by reference to the mechanics of the news business: the requirements for photographs, the nature of deadlines, the common training of producers and editors, etc. But the facts are otherwise. As Rothman and Lichter state:

> In 1972, when 62 percent of the electorate chose Nixon, 81 percent of the media elite voted for McGovern. This does not appear to reflect any particular personal aversion to Nixon, despite the well-publicized tensions between the press and his administration. Four years later, leading journalists preferred Carter over Ford by exactly the same margin. In fact, in the Democratic landslide of 1964, media leaders picked Johnson over Goldwater by the staggering margin of sixteen-to-one, or 94 to 6 percent . . . over the entire sixteen-year period, less than one-fifth of the media elite supported any Republican presidential candidate. In an era when presidential elections are often settled by a swing vote of 5 to 10 percent, the Democratic margin among

[3] Stanley Rothman and S. Robert Lichter, "Media and Business Elites," *Public Opinion* 5 (October/November 1981): 42.

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elite journalists has been 30 to 50 percent greater than among the entire electorate.

It should be noted that by "journalists," the authors mean writers, producers, editors, and directors. It comes as no surprise, then, that the ideology that shows up in the *Public Opinion* poll shapes news coverage of major events: "In most instances, majorities of the media elite voice the same criticisms that are raised in the Third World. Fifty-six percent agree that American economic exploitation has contributed to Third World poverty. About the same proportion . . . find America's heavy use of natural resources to be 'immoral'. . . ." Overall, in the media's view, the United States is one of the world's major problems, not a contributor to solutions. Thus, a solid 55 percent in the poll would prevent the CIA from undermining foreign governments hostile to us—a media attitude that has recently been adopted by the House of Representatives Select Committee on Intelligence.

In short, as William Rivers recently put it, "it is the media that set the agenda for public discussion and decision." [4] And the media are a politically homogeneous class with at least one well-defined class interest: increasing their own power. This, too, is confirmed by the *Public Opinion* research, which shows that in the media elite's view, they are today the second most powerful group in American society—second only to the business community—and should be the *most* powerful.

THE ascent of the media has been made possible by two other developments in the last twenty years: a legal interpretation of the First Amendment that effectively grants the media remarkable privileges without demanding commensurate responsibilities; and the government's almost total compliance with the demands of the press. If the media are going to play a more tempered role in our society, both these developments must be reversed.

First, there is the matter of the media's rights and responsibilities. We have all heard that the right of free speech is absolute, and we all know that this is nonsense. The only real dispute among persons of intelligence and good will is where to draw the line. Thus far, it has been drawn around a community of people that the courts term "public figures." Regarding such persons, the courts have practically granted the media unrestrained assault, save in those exceedingly rare cases where a person can show that he was damaged by the media because of malice, in articles or broadcasts that were false. In practice, malice proves very difficult to establish in court, hence the media rarely have had to pay for their attacks on reasonably well-known individuals. Furthermore, the media have all the advantages in court cases. They are wealthy and, as the Colonel Herbert case shows, can afford to pay lawyers for years. Moreover, they can use the First Amendment to keep con-

[4] William L. Rivers, *The Other Government* (New York: Universe Books, 1982).

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trol over the "evidence" in such cases. Thus, a plaintiff charging libel and asking to see unpublished notes or unbroadcast video tapes is often told that the media will not produce these because of alleged tampering with press freedom.

A gross unfairness occurs in one specialized segment of the media, namely those publications that deal with the alleged excesses of the American intelligence community, and "name names" of alleged American spies. I have myself been "accused" of having worked for the CIA overseas by some of these publications, and I feel strongly that this represents at least some threat to my personal security, especially when I travel abroad. Having never been in the employ of the Central Intelligence Agency, I once tried to bring libel charges against a publication, and was lucky enough to find a good lawyer who was willing to take the case *pro bono*. But he told me I would have to put up at least $10,000 to cover expenses, since the publication would make us travel overseas, interview "sources," and so forth. Finally, he said, we would not be able to collect any money even if we won the case, since the publication in question was structured so as not to have any assets worth mentioning. Thus, in order to respond effectively to these allegations, I would have to go into debt.

There is a simple remedy for such matters, and I suggested it when Congress was debating the question of protecting the intelligence community from such charges: If a law were passed requiring an automatic, stiff fine for publications that *incorrectly* accused someone of being a spy, it would quickly put an end to such libelous activities, since editors can rarely be confident of such "evidence" as they are given. At the same time, the law would protect those publications that report accurately—and indeed, they should be protected.

Whatever the specific remedy, we need serious libel laws, since only such laws will make it possible for citizens to protect themselves against unrestrained, false attacks from the media. Note that the media generally support such legislation when it affects other groups, but in their own case they predictably urge "in-house" committees, ombudsmen, and the like. There is a philosophical point in this connection: As Friedrich Durrenmatt has demonstrated, no human being can stand up to a minute examination of his biography. Everyone is guilty of something, whether a sin of omission or commission. It follows from this that any time the media decide to "zero in" on a public figure, eventually enough will be uncovered either to bring about the figure's political demise, or—in the case of a person whose skin has not been sufficiently thickened for such an ordeal—his "voluntary" departure from the scene. There are restrictions on the FBI, making it very difficult for them to investigate a person without solid grounds for suspecting criminal activity, but on the media there are none. They can snoop around simply because they suspect that they will find something interesting (and of course, sooner or later, they always

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will). This simply has to stop, for eventually persons of quality and sensitivity will refuse to accept positions of importance because they do not wish to have every detail of their lives exposed to public analysis.

To make matters worse, the government's defense of its own interests vis-a-vis the media is increasingly feeble. Every president in memory has complained about leaks and about the unfairness and inaccuracy of the media, yet no administration since John Kennedy's has enthusiastically presented its case to the public. There have been exceptions, and they suggest that if the government accepts the rules of the game and takes its case to the people, it will do very well indeed. Thus President Carter overcame considerable hostility and got the Panama Canal treaties passed, and President Reagan beat back a major challenge to his second-year budgets. These victories in the face of intense domestic opposition and, in the case of President Reagan, media hostility as well, show that the government can achieve many of its objectives if it defends itself with passion and continuity. Most of the time, unfortunately, our officials content themselves with single media "events" rather than conducting extended campaigns. It is the latter that work, whereas the former simply play into the hands of the media by providing them with a single event that they can then place in a broader context.

Finally, there is a political question. What would happen if the government went back to its own work, and relegated the media to a secondary role in Washington's daily routine? Why should the taxpayers have to pay for large press quarters in every public building? Why should the Williamsburg economic summit have consisted of seven national leaders, a few assistants, and more than four thousand journalists and *their* assistants? Given the lives they lead, and the status they are awarded in Washington, the media elite will continue to assert its prerogatives and seek to expand its power. But if our public officials treat members of the media with normal respect while reminding them that they are mere citizens, that no one elected them to make national policy, and that they will not be given the keys to the kingdom, I suspect that rationality may yet assert itself. If such an arrangement is not made soon, we are faced with two possible outcomes: The media will eventually prevail, thus producing electronic mobocracy, or government by public opinion poll; or there will be a violent anti-media reaction, leading to harsh regulation of the media and real damage to freedom of the press.

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Conservative Statecraft

WILLIAM KRISTOL

***George F. Will:* Statecraft as Soulcraft: What Government Does.** *Simon and Schuster. 186 pp. $13.95.*

IN 1950 Lionel Trilling noted "the plain fact that nowadays there are no conservative or reactionary ideas in general circulation." In 1952 Robert Taft, leader of conservative Republicanism, was once again denied the Republican presidential nomination. One can understand why Russell Kirk first intended to call the book he was then writing (published in 1953 as *The Conservative Mind*) *The Conservatives' Rout.*

Three decades have passed, and conservatism has made a remarkable comeback. Not only are there conservative ideas in general circulation, but increasingly they set the terms of debate. (Indeed our most interesting debates—in political theory and economics, for example—tend to be those *among* conservatives.) And, of course, Ronald Reagan has succeeded where Robert Taft failed. In 1983 the conservative movement seems to be flourishing.

But can it change the direction in which the country is headed? The conservative revival has been accompanied by—and is in some measure a reaction to—a decline in conservative institutions, habits, and policies. It is some comfort to conservatives that, as things have gotten worse, conservative thinking has become more prominent and conservative political activism more successful. But it is rather cold comfort, made colder still by the fear that the conservative revival may well prove only a brief interlude in a long, downward course. Or can the conservative intellectual and electoral successes be completed by a conservative statesmanship that could reverse that course by knitting together conservative thought and conservative activism, by transforming intellectual theorizing into practical reasoning, and political impulses into a political program?

For nearly a decade, in one of the finest sustained performances in recent American journalism, George Will has attempted "to examine issues and events through the lens of principles that, I am confident, constitute a coherent conservative philosophy." *Statecraft as Soulcraft* is the systematic exposition of that philosophy. Will disavows any claim of novelty for the "old ideas" he advances in the book, but, as he says, "they have been only hesitantly and sporadically advocated" here in America. Will is an unhesitant and

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systematic advocate, one who seeks to "recast conservatism in a form compatible with the broad popular imperatives of the day," and thereby "to change somewhat the agenda and even the vocabulary of contemporary politics."

An agenda for statecraft must begin with an analysis of the current situation. According to Will, the citizenry of the United States is characterized by an increasingly unabashed and self-centered individualism, which threatens our sense of social cohesion and breeds an indifference to the public good. We are also more preoccupied than ever with our material well-being, and ever less able to defer the gratification of our proliferating appetites. Thus, we are a people "in danger of lingering in perpetual childishness," a nation subject to "a kind of slow-motion barbarization from within."

This danger has deep roots, for "liberal democratic societies are ill-founded." If we live less elevated lives than we are capable of, this is because our public philosophy seems to license our condition by legitimating low expectations, and because our "public institutions seem unconcerned with the bridling of egoistic motives." The Founders' reliance on the policy of supplying, by opposite and rival interests, the defect of better motives, ensured the defect they too easily accepted as inevitable. For "a nation that announces, at its outset, that it can dispense with 'better motives' than self-interest in politics does not encourage self-restraint, self-denial and moderation in any sphere of life." It thus subverts itself, for democracy requires these habits. We see today the deleterious consequences of the Founders' reliance on a set of institutional arrangements as a substitute for the cultivation of public-spiritedness and civic virtue.

Why was this cultivation neglected? Because the "intellectual soil" from which the Founders' political practices grew was that of modern political philosophy. According to Will, "some thinkers long dead have defined the tasks of today's government, and their definition is inadequate and, in the long run, dangerous." Those political thinkers define the first task of government as peace and security, for our foremost individual interest is taken to be self-preservation; but they cannot then explain why citizens ought to risk death for the sake of the common defense. They define the task of government as securing liberty, but they do not attend to the social conditions and habits that are required to preserve it. They define the task of government as providing the conditions for the pursuit of happiness, but happiness is understood as the never-ending and never-satisfying quest for material comforts. In sum, "liberal, bourgeois, democratic—in a word, Lockean—societies have more complex prerequisites than they seem to think," or than the political philosophers of liberalism have thought. Thus the need for conservative statecraft, which "has as its aim the perpetuation of free government by nurturing people so they can be comfortable

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and competent in society." This is a political task, "requiring measured involvement of government in encouraging temperateness, farsightedness and civic spirit," and one for which the Founders' political philosophy gives little guidance.

This is not to say that conservative statecraft is simply ministerial to liberal ends, such as the perpetuation of societies with free governments. Conservative statecraft *is* necessary for this worthy end, and it is this role of conservative statecraft that Will emphasizes. But he does not shrink from reminding us that "we should judge a society by the character of the people it produces." Our reluctance "to approach a political question from that direction" and to concern ourselves with the formation of character is inherited from liberal political philosophers. Their philosophy has turned our attention to peace, to comfort, at best to liberty; but Will quotes Burke: "The effect of liberty to individuals is, that they may do what they please; we ought to see what it will please them to do, before we risk congratulations." After two centuries of our having done as we please, Will is doubtful that simple congratulations are in order.

WHAT then is Will's program? What should the character of conservative statecraft be—here and now?

At the most general level, according to Will, we need to recover the rich, older tradition of political philosophy, "from Aristotle to Burke." This recovery would strengthen our society's "ability to formulate purposes that enable persons to live the most eligible lives, harmoniously." It would make our government "more aware of, and forthright about, the fact that statecraft is, inevitably, soulcraft." It would teach us a "renewed appreciation for the ennobling functions of government," and would challenge the tendency towards withdrawal of the government from a concern with the moral character of the citizenry. It would point us toward a "new, respectful rhetoric—respectful, that is, of the better angels of mankind's nature," a rhetoric "more Ciceronian, more Lincolnesque, less Madisonian, less Marshallean."

One's first question about Will's far-reaching program is to wonder whether he does not write off the American Founders rather too quickly. He surely overstates the case when he says that, according to *The Federalist*, "public-spiritedness will not be assumed, or even necessary, even in public officials," or when he asserts that liberal democracies such as ours are "founded with explicit and exclusive reference to individual self-interestedness." Elsewhere in his discussion Will offers, as one would expect, a more measured and subtle understanding of the Founders' thought. Still, the quotations above reflect the general thrust of Will's argument, and provide support for his contention that "prudent political thinkers have more worries than appear prominently in Madison's philosophy." One can as fairly say that Madison had more worries than appear prominently in Will's account of his philosophy.

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Will does acknowledge that liberal democracies have governed themselves more sensibly than one might expect from his description of their theoretical foundations: "modern actions often speak not only louder but more sensibly than modern words." This is due in good part to "a dwindling legacy of cultural capital which was accumulated in sterner, more thoughtful eras." But I wonder if closer investigation would not show that much of that capital was created, or added to, by our stern, thoughtful—and mostly modern —Founders. For example, the cultural capital of respect for rights and the rule of law was increased by Founders such as Madison and Marshall, partly through their rhetoric and partly through the effects, direct and indirect, of the operation of the institutions they created (such as a written Constitution, changed only with difficulty, and enforced against legislative majorities by judicial review). Will's account of the Founders tends to ignore the usually indirect ways thoughtful statesmen working within a modern liberal framework have been able to elevate liberal democracy. This has consequences for Will's understanding of the task of conservative statecraft.

One sees those consequences by comparing Will to Tocqueville. One cannot but think of Tocqueville when reading Will's appeal for a "sociology of civic virtue":

> We need to know more about the policies and processes, the fabric of rights and duties, the sort of involvements in particular institutions, public and private, that are apt to summon the better angels of the citizenry's nature. We need to understand the chemistry of citizenship, the skill of disposing persons to think of public as well as private interests.

Tocqueville's enterprise was nothing but this—an analysis of modern democracy with a view to the elevation of its citizens toward civic virtue and, as far as possible, toward virtue. Yet the thrust of Tocqueville's work is quite different from Will's, as Will's use of two passages from Tocqueville on the subject of "self-interest rightly understood" makes clear.

The first passage is Tocqueville's explanation that the principle of self-interest rightly understood is useful because of its conformity to human weakness. Will takes this as an example of modern political philosophy's effort to make the good social order more accessible to human beings as they are, as opposed to a concern with elevating human beings toward what they should be. Will does not quote the succeeding paragraph in *Democracy in America*, where Tocqueville goes so far as to say that if the principle of self-interest rightly understood does not lead the will directly to virtue, "it establishes habits which unconsciously turn it that way."

On another occasion Will quotes Tocqueville's statement that "I am not afraid to say that the principle of self-interest rightly under-

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stood appears to me the best suited of all philosophic theories to the wants of men of our time, and that I regard it as their chief remaining security against themselves." Will conspicuously fails to quote the rest of the paragraph: "Contemporary moralists therefore should give most of their attention to it. Though they may well think it incomplete, they must nonetheless adopt it as necessary." Unlike Tocqueville, Will refuses to bow to this necessity. He does not quietly amend the Founders' emphasis on self-interest; he rejects it. According to Will, the Founders' teaching of the inevitability of self-interest is not "prudent as an animating principle of politics" because it tends to become a self-fulfilling prophecy. But the question for statesmen today is: What teaching is prudent as an animating principle of our politics now? Perhaps we can best evaluate Will's bold refusal to found conservative statecraft on a Tocquevillian concession to, and education of, self-interest, by considering the practical (though still general) recommendations that Will's fundamental perspective entails: his advocacy of government as moral educator, and his sketch of "an affirmative doctrine of the welfare state."

ACCORDING to Will, "it is generally considered obvious that government should not, indeed cannot legislate morality. But in fact it does so, frequently; it should do so more often; and it never does anything more important." Also, it should do so more forthrightly, since "government would do better what it does if it would admit what it is doing." Government should set itself the task of promoting the "habits, dispositions and values" that make men fit for responsible self-government and that foster the sense of "moral neighborliness" a decent society requires.

Will is of course aware of the dangers of this. He emphasizes that "to say that statecraft is soulcraft is not to say that the state should be the primary, direct instrument for soulcraft." The state should delegate "many of its chores" to intermediary institutions. But fundamentally these chores are the state's responsibility; in fact "politics needs to be increasingly important as a source of social unity because culture is decreasingly so."

What would be the practical effect, now and in the foreseeable future, if conservative statecraft embraced Will's perspective? I would say: bitter and endless fights about what habits and values should be promoted, and no improvement in our moral character or sense of social unity. Are we then left with no alternative to Will's position but a false and dangerous pretense that the character of the citizenry does not matter? No. Will himself points the way in his discussion of the "sociology of virtue." This fine phrase suggests the possibility of cultivating virtue, civic and otherwise, through *society* rather than through politics. Will chastises Madison for acknowledging that republican government "presupposes the existence" of certain admirable human qualities in the citizenry, but then refusing to attend to the fostering of these qualities: "It

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is folly to will an end but neglect to will the means to an end. The presuppositions of our polity must be supplied, politically." But Will ignores the Madisonian alternative: that the political order does in fact indirectly foster certain of these qualities and that such qualities will be primarily supplied socially rather than politically.

It is of course true that a sociology of virtue requires a political order that at least does not thwart the cultivation of virtue at every turn. This might well require major revisions in contemporary constitutional law and legislative policy. But such revisions would, I think, point back in the direction of restoring limited government and the rule of law, rather than toward a politics animated by an explicit concern with shaping character, a politics that would "share one purpose with religion: the steady emancipation of the individual through the education of his passions."

This passing reference to religion is one of the few in Will's book. This is curious because "soulcraft" has always meant, above all, religion. Will may well assume that politics must now step in where religion is no longer able to tread. But if religion is as weak as Will seems tacitly to assume, then our situation cannot be redeemed by politics; if religion is stronger than Will seems to think, then perhaps politics need do less. Will's soulcraft rejects self-interest and ignores religion; on what hinge is the cultivation of virtue to rest?

WILL's second practical (if general) recommendation is that conservatives adopt an "affirmative doctrine of the welfare state." They should accept the welfare state as "important to, and probably indispensable to, social cohesion, and hence to national strength," and also as a potential embodiment of a "wholesome ethic of common provision." Will urges American conservatives to turn their energies towards constructing "a welfare state on conservative principles," one pursuing conservative social goals—supporting the family and communities, combating "the tendency of the modern bureaucratic state to standardize and suffocate diversity."

No conservative expects, and few hope for, a complete rollback of the welfare state. And Will qualifies his endorsement of the welfare state by cautioning against its tendencies toward political centralization and the suffocation of society by the state. Despite his strictures against "cranky and recriminatory" conservatism, then, the difference between it and Will's "conservatism with a kindly face" seems a matter of degree and emphasis.

But in politics emphasis is important. Will hopes for "prophylactic doses of government," and for "the use of government to prevent statism by enhancing the social competence of citizens"; are these hopes reasonable in America today? Will may be right to say that "in the best and most mature polities, what government does is encourage society to do things through its organic working"; but is this likely in *our* polity? If not, is there really nothing to be said

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for the old, cranky, conservative suspicion of the welfare state? Will acknowledges that one way the government strengthens intermediary institutions is by not usurping their function. But for Will, this is not enough: "government can plan positive inducements to vigor." Considering the likely character and effect of these inducements, a prudent conservative might well settle for a general principle of non-usurpation.

Will may be justified in insisting that his conservatism is "real" or "proper" conservatism. But "proper conservatism" simply may not be identical to the proper conservatism for America today. Prudence requires, as Will points out, attention to particularity and probability. If Will's vision came to dominate American conservatism, and then American politics, would conservative ends prosper? I have my doubts. And could Will's conservatism come to dominate American politics? We have a clue to the answer to that question in Will's acknowledgment that in America "real conservatism had been a marginal and primarily cultural school of criticism," and that in America today "there are almost no conservatives, properly understood." It was Burke who said, "When bad men combine, the good must associate; else they will fall, one by one, an unpitied sacrifice in a contemptible struggle." With whom would Will's conservatives associate? A successful American conservatism could—and should—have in the back of its mind, so to speak, many of Will's general premises; but it would, I think, have to be less disdainful than Will of populism, friendlier to at least a moderate libertarianism, and more attentive to religion as a ground of the American sociology of virtue. A conservative statecraft that drew together these different strands of the American political tradition into a conservative movement would be a somewhat different and messier enterprise than Will's attempt "to tidy up the idea of conservatism." I do not think it would be any less true to the spirit of true conservatism, or to the spirit of Aristotle, or Burke, or Lincoln.

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The Phantom of Democratic Socialism

MARK LILLA

***Michael Walzer:* Spheres of Justice: A Defense of Pluralism and Equality.** *Basic Books. 345 pp. $19.95.*

FOR nearly two decades now Michael Walzer has occupied a position shared by few other American political writers: He is, to revive the disused term, a public philosopher. Though many medi-

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ocre thinkers have claimed that title in the past, I use it in its highest sense and with the greatest admiration. At a time when political theory within the university has devolved into donnish chit-chat in the Oxbridge style, or "politics" in the Marxist sense, Walzer stands out. He is a highly literate man who taught political philosophy without pretending that he himself had anything novel to say about political metaphysics; he has been happy in his essays to float just above the contemporary.

But what is one to make of a public philosopher as uncomfortable with his country as Walzer seems to be? I do not suggest that he is "un-American" or "anti-American," whatever that would mean. Rather, he has always seemed somewhat aloof in his writings, perhaps even a little contemptuous of the citizens for whom he professes such deep concern. Even the banner he flies, that of the "democratic socialists," is elusive in the extreme (at least in the American context). Who are these people, really? They certainly are not liberal Democrats, and Walzer has always taken great pains to distinguish himself from the anti-Communist Social Democrats centered in the labor movement. And, of course, he is not a Communist (or a neo-Marxist, or a Trotskyist, or . . .). So just what is he?

Perhaps we Americans put too much stock in political taxonomy, especially when considering essayists from whom we ought to expect a certain degree of political independence. But independence can slide into idiosyncracy, and soon into confusion, if a writer's underlying principles are not properly thought through. Irony becomes easy, paradox a platitude. Until now, Michael Walzer has enjoyed his detachment and has avoided a thorough discussion of political fundamentals. In *Obligations* (1970) he collected a series of careful essays on civil disobedience, war, and citizenship; *Just and Unjust Wars* (1977) was a unified moral-historical argument, but on this limited subject; and *Radical Principles* (1980) collected his shorter writings on domestic politics and the modern welfare state. Thoughtful and graceful as these works are, they simply do not give a complete picture of Walzer's democratic-socialist vision. It was not necessary to construct a "system," but it had become necessary for him to clear up some seeming contradictions in his work by addressing the two central questions in the history of political thought: What is the nature of political philosophy? And, what is the nature of justice?

SPHERES OF JUSTICE indirectly answers the first question by addressing the second—or, more precisely, by arguing that contemporary political philosophy misunderstands itself because it misunderstands the nature of justice. Walzer's targets in half the book are the naive egalitarians and popular contemporary philosophers who put forward what he calls theories of "simple equality." He does not deny that political justice has something to do with equality, he only denies that equality, or any other principle in

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political thought, can be reduced to a simple formula or rule that may be applied to any society at any time in human history. Not only are there radical differences between societies, or within the same society at different times, there also are important differences between the separate "spheres" of every society—and all these differences *matter* in thinking about justice.

If Walzer is successful only in persuading his readers that political inquiry must recognize that individuals in modern society live in several social spheres, he will have accomplished a great deal, for the unreal, hypothetical quality of political philosophy today derives from willfully disregarding this rather obvious fact. Though these social spheres must be in essential harmony if one is to have a society at all, they are organized in different ways and each has a distinct coherence that allows it to flourish. Thus there is no way to take the various spheres of social life—local politics, the family, clubs, businesses, churches, schools—and reduce them to one dimension, say the economic one, and thereby derive a principle of justice which will then apply to every one. Walzer especially has in mind John Rawls, Robert Nozick, and Ronald Dworkin, who combine reductivism with fallacies of composition to render their work, if not simple to understand, then certainly "simplistic" (as the professors say).

Walzer does not take refuge in complexity—another professorial dodge—he says he want to understand it. He writes, "to search for unity is to misunderstand the subject matter of distributive justice . . . justice is a human construction, and it is doubtful that it can be made in only one way." To understand justice in a particular society one must understand it in its own terms, see what the spheres are like, trace out all the boundaries. He admits, "My argument is radically particularist. . . . I mean to stand in the cave, in the city, on the ground."

Unless one is a radical relativist about politics, such internal (or "immanent") criticism cannot stand alone—certain basic assumptions about justice and political life must be made and defended. Walzer is not such a relativist, and his fundamental assumption is limited and well-defended: Spheres must be kept distinct. If one sphere begins to dominate another—if, say, business encroaches on the work of the church, or vice versa—that is tyranny, and tyranny is unjust. Desert, freedom, equality, and property rights are all important in politics, but as principles of justice they are too simple because they fail to distinguish between spheres, and if followed outside their proper spheres they would (and sometimes do) lead to tyranny. And what are the "proper spheres"? Walzer correctly refuses to answer *a priori*: "A given society is just if its substantive life is lived in a certain way—that is, in a way faithful to the shared understanding of its members." Justice cannot be some super-principle requiring a radical redesign of those understandings, because, "if it did, justice itself would be tyrannical." So as we examine the range of human societies, from castes to tribes to welfare states,

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we are left with only one, aphoristic principle: "Good fences make just societies."

The objections to Walzer's view immediately come to mind, since that view, and variants of it, have a long genealogy in the history of political philosophy. He will be criticized for ignoring "natural right," and has already been attacked (the word is not too strong) for turning his back on contemporary "transcendental" theories of distributive justice.[1] Though Walzer does not try to preempt such criticism in *Spheres of Justice,* there are good answers—indeed, I think superior answers—to these objections which he undoubtedly will give in detail elsewhere. For the moment, even critics must take Walzer seriously: His position is important in its own right, and especially within the context of contemporary American philosophy.

To use a not entirely inappropriate metaphor, American philosophy seems to be "molting" at the moment, as the concerns and style of analytic philosophy give way to a re-examination of Continental work, ancient and medieval philosophy, and even American pragmatism. This "molting" constitutes a mini-revival of serious philosophy within the university, which makes clear, in contrast, just how arid and unpolitical has been the recent so-called "revival" of political thought among professors working within the analytic tradition. What must be restored is the understanding that political inquiry is not a process of *discovery*—either of "what we mean by 'justice'" or of the eternal truths about human nature—but rather a process of *exploration* in which human beings in concrete, historical, political communities seek to build a livable world for themselves out of the material they inherit. It begins in a study of our shared history of ideas and institutions, of our shared way of life today, and ends as we extend this political and philosophical activity together into the future. Though he might not put the matter in just these terms, this internal activity is what Walzer means to defend. and it is what leads him to conclude that justice is "different goods to different companies of men and women for different reasons in accordance with different procedures. And to get all this right, or to get it roughly right, is to map out the entire social world." I can think of no better summary of the task, and the end, of political philosophy.

And what a pity Michael Walzer shies away from that task. The bulk of *Spheres of Justice* is an attempt to "map out the entire social world" through a chapter-by-chapter examination of the spheres of American life, and this attempt is so poorly carried out that one is almost tempted to question the seriousness with which the original project was put forward. But in the end the problem probably lies deeper: The failure of *Spheres of Justice* is, in a

[1] See Ronald Dworkin's review, Walzer's response, and Dworkin's rebuttal in the April 14 and July 21, 1983 issues of the *New York Review of Books.*

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sense, an inadvertent answer to the perennial question, "Why is there no socialism in the United States?"

By Walzer's own standards, an examination of American justice must begin with an understanding of the nature of American social spheres and how Americans feel about the way in which they are separated. Yet he fails in just this task because he cannot actually see this country through his "democratic-socialist" spectacles —and this is especially true in his consideration of American capitalism. This is a question of vision, not philosophy. The portrait Walzer paints of his country and his fellow citizens is simply an unrecognizable one.

The problems begin in Walzer's chapters on the cultural spheres of American life: free time, education, kinship and love, divine grace, and recognition. Most of these chapters are very thin (he thinks it is probably a good idea for everyone to have a vacation), but running throughout is just the sort of reductivism he himself criticizes in the beginning of the book. After brilliantly criticizing Marxists for this failing, Walzer continually lapses into socialist locutions that reduce the substance of cultural spheres to the level of "goods" which must be justly "distributed." We read many sentences like these: "Human society is a distributive community. . . . Distribution is what social conflict is all about. . . . 'Honor thy father and mother' is a distributive rule." It is not that Walzer really wants to politicize these spheres; he seems genuinely concerned to maintain the autonomy of church and family for instance. But even to speak in this crude, materialistic way, rather than addressing faith, familial love, or dignity in their own terms, is to be deaf to the distinctive qualities of social realms. Walzer does not—perhaps in the end, he is unable to—take his own, very good advice seriously.

WALZER'S writing only revives in the chapters that speak to traditional socialist concerns: security and welfare, money and commodities, and hard work. But no matter how hard he tries to convince the reader that he is interested in more than "simple" equality or "simple" socialism, his pen belies him by constantly returning to the same theme: Capitalism is tyrannical because it allows economics to dominate other spheres. Again, Walzer is right to address the question of justice within the economic sphere, and to wonder whether money is too influential in politics, culture, or religion; these are important, traditional questions of political philosophy. Yet his understanding of modern capitalism, especially its American variant, is so distorted that he cannot begin to know whether it renders American society less just. Walzer is so deeply rooted in utopian socialism that, in a world filled with more political tyrannies than at any time in modern history, he can only warn that "a radically *laissez-faire* economy would be like a totalitarian state. . . ." (Unless I miscount, there are only three pages on political tyranny in all of *Spheres of Justice*.) Like the prig who

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hears double-entendres in every innocent conversation, Michael Walzer smells the influence of money everywhere.

At root, the problem is that Walzer still sees the economy in static, not dynamic, terms. In the midst of affluent, twentieth-century America he can only see the nineteenth century, with its robber barons, its petit-bourgeois tyrants, its sweatshops, and its syndicalist trade unions. There are no small businesses here, no new industries, no inventions or imagination, and, most importantly, no economic growth in Walzer's portrait of America. There are workers and there are bosses; there are no entrepreneurs, there is no mobility. "The merchant who panders to our desires" is here, but not the geniuses who design microchips, the employee who saves enough to open his own shop, or the drug company that creates new life-extending medicines. The history of the post-war American economy can be told in the rise of a large middle-class, a tremendous mobility of capital and labor, rapid spurts of economic growth, continued invention and adaptation, and the establishment of a decent welfare state. Instead of trying to understand this history—what really makes American capitalism different—Walzer is satisfied merely to repeat tired cliches and quote Brecht and Shaw.

Internal political criticism rises or falls on the clarity of its vision, and Walzer's falls with a thud. Oddly enough, he has failed to learn from the Marxists that the rise of capitalism, especially in the U.S., has upset our traditional political concepts and categories, and that we must rethink them. Walzer will not. For example, he treats economic growth as if it were neutral with respect to our conceptions of justice, when one of the great political lessons of the American experience is that people *do* treat growth as a sign of fairness. In an open society, economic growth increases opportunities for everyone, which is truly just. Talk of "equal opportunity" is a sham in a stagnant society, but in one bubbling over with entrepreneurship and mobility it is the key definition of economic equality. (Redistribution only supplements this basic equality.) Theories of distributive justice are anachronisms if they ignore the dynamic character of the economy under modern democratic capitalism, how it has changed the way citizens and their families view their prospects.

WALZER might reply that he is willing to tolerate the dynamic of capitalism so long as it does not encroach on the other social spheres, polluting them with "the universal pander." He says as much when he admits the merchant to his just society "so long as he isn't selling people or votes or political influence, so long as he hasn't cornered the market in wheat in a time of drought, so long as his cars aren't death traps, his shirts inflammable. . . ."

It is hard to dispute the principle at work here—indeed, the existence of our administrative and legal regulatory system is a testament to Americans' shared concern to maintain a degree of political

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control over the economy. *How* that control is maintained, and to what extent—these are the real practical issues of political economy in this country, but Walzer does not deal with them. Not only does he misunderstand capitalism in American society, he cannot begin to fathom "the shared understandings of its members." Democratic socialists cannot bring themselves to do pragmatic, empirical policy studies, but that is the level at which Walzer's fellow citizens think about political economy. He is right to say that government "is the crucial agency of distributive justice; it guards the boundaries within which every social good is distributed and deployed." True enough—and over the past several years Americans have used it to shrink the boundaries of government itself, or decentralize its functions so as to allow the other spheres to flourish. The New Deal was a triumph of this sort of politics, but so was Proposition 13. We have good fences, however much and however often we readjust them.

Perhaps nothing so exposes Michael Walzer's confusions "in the cave, in the city, on the ground" as his chapter on "hard work." Hard work is never precisely defined, and Walzer ignores how successful, and therefore popular, capitalism is in making work progressively easy. But since it must be admitted that some hard work we will always have with us, his argument is that such work should be shared equally by citizens, as in a kibbutz, lest those who do it become less than citizens. He is convinced that people in capitalist societies who do menial work—his example is garbagemen—carry a stigma into their private and social lives.

Once again, Marxists understand capitalism better than Walzer does: The genius of modern capitalism lies in the freedom it gives individuals to separate, or alienate, their labor. I say genius because we now know, contra Marx, that separating ourselves from our work can lead to greater social equality, not less. Under precapitalism, one *was* a craftsman; today one *works as* a craftsman, and after work one is a parent, or church member, or taxpayer. Americans do not ask "What are you?," they ask "What do you do?" This lesson was brought home recently when I was in a somewhat expensive Manhattan cafe and noticed, sitting across from me, the young man who serves coffee in my office building. He was dressed in a fine blue blazer, grey flannel slacks, and an ascot—and, of course, I was the only one in the place who knew he had a "menial job." He was treated like any other well-dressed citizen because the spheres of work and leisure are kept fairly distinct in this country. Uniforms do not make menial labor less dignified so much as they preserve our dignity—and equality—outside the workplace.

To overcome this supposed stigma associated with hard work Walzer urges more workers' cooperatives along the lines of the Sunset Scavenger Company, which is run by garbagemen in San Francisco. But again he has misread his fellow citizens, for cooperatives have not been very popular among American workers who

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do want to separate their private selves from their work, and who *do* want the freedom this separation gives them to pick up and move with ease. There is nothing wrong with syndicalism, but we really must ask ourselves, and Mr. Walzer, why it has remained only a professorial pipe-dream. Perhaps the answer is simple—perhaps people think there is more dignity in working for a garbage company than in owning one.

So we are left with a very confused, schizophrenic book by what I take to be a very confused, self-divided man. Michael Walzer has seen through all the fundamental mistakes which underlie contemporary political philosophy and, with no little grace, has argued for a much needed return to internal political criticism. This is an important lesson, but it is one he simply cannot afford to learn if he wishes to retain his democratic-socialist principles in this country. The reason Walzer cannot properly address the question of justice in this country—which is the task he gives himself—is not that he misunderstands justice, but that he misunderstands America: its history and its institutions, its people and their aspirations. An American public philosopher who truly immerses himself in American life can hardly hope to emerge with his European categories and ideals intact.

Michael Walzer cannot afford to take such a risk since, at heart, he is a sentimentalist for whom the democratic-socialist ideal has always been a phantom, an excuse for avoiding what he himself considers serious political inquiry. An otherwise thoughtful contribution to political thought, *Spheres of Justice* fails because it is haunted by so much romance and cliche. We do not read much about "American life" in Walzer's earlier essays; instead, we learn about the abstract virtues of some never-defined "community." How clear it is now that by "community" he has never been referring to this one, the one we share with him. He means that other one, lost deep in the past, or always just over the horizon.

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A Theory of Economic Evolution

RICHARD N. LANGLOIS

Richard R. Nelson and Sidney G. Winter: **An Evolutionary Theory of Economic Change.** *Harvard University Press. 437 pp. $25.00.*

The year 1983 is significant in economics circles, for it is simultaneously the Keynes-Marx-Schumpeter Centennial. It has been a century since Karl Marx died and John Maynard Keynes and

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Joseph Schumpeter were born. To many, Schumpeter would seem the odd man of this triumvirate. Marx and Keynes wrote two of what are commonly held to be the three most important books in the history of economics (the third being Adam Smith's *Wealth of Nations*), and their names are instantly recognized far beyond the confines of academic economics. By those standards, Schumpeter is a comparative unknown. There are Marxian economics and Keynesian economics; there are Marxian economists and Keynesian economists (along with "neo" and "post" variants of both). But what is Schumpeterian economics? And where are the Schumpeterian economists? Unhappily, the answer is that, until recently, Schumpeter's ideas have attracted a relatively small following within the economics profession. The reasons for this are many and complicated, but at least some of the blame must be placed on Schumpeter himself.

The mainstream of economics, in Schumpeter's day as in our own, sees the economic problem solely as a matter of allocating known resources to given ends in an optimal fashion. In the service of this vision, it applies, with unmodulated single-mindedness, a maximization-and-equilibrium formalism. One first portrays hypothetical economic agents as making conscious, optimal choices among known alternatives (a mode of behavior baldly equated with "rationality"), and then one adjusts the economic variables until those choices are logically consistent with one another. Schumpeter the methodologist admired the beauty of this approach, comparing the achievements of its architect, Leon Walras, to those of theoretical physics; and Schumpeter the positivist professed a vision of linear progress in economic science, proclaiming an underlying harmony and an increasing convergence of opinion among economists.

But the substance of Schumpeter's own writings paints a very different picture. His model of rationality is a broader and more humane one derived from Max Weber, and he is concerned with not strictly "maximizing" modes of behavior such as habit and entrepreneurial leadership. Moreover, his work stands as a profound attack on the static approach to economics, stressing instead the importance of disequilibrium, innovation, and structural change. Like Marx and Keynes, Schumpeter offered a challenge to the reigning orthodoxy; but unlike either of them, he remained an ambivalent, or perhaps a far too subtle, iconoclast.

The syncretic spirit that Schumpeter displayed is nowhere in evidence today. A general dissatisfaction with conventional patterns of economic thought is a much-publicized topic of late, even if the dissent supposed to have accompanied this dissatisfaction is not as widely visible in the teaching and practice of academic economics as the press clippings might suggest. Among the effects of this mood of dissolved consensus has been a renewed interest in many Schumpeterian themes and ideas. And today there is little embarrassment about their unorthodox flavor.

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THE strongest reassertion of a Schumpeterian economics in present-day thought is that by Richard Nelson and Sidney Winter, whose recent book, *An Evolutionary Theory of Economic Change*, is the product of a decade-long effort to carry out a formal research program that would constitute an alternative to the prevailing orthodoxy. Assessing the merits or prospects of a new research program is always a tricky business. But the ideas of Nelson and Winter are rich in theoretical potential; if they do not manage to catch on among the next generation of theorists, it will be for other reasons.

The book is aimed principally at professional economists, and much of it, particularly the middle chapters, may be rough going for someone who has not spent time with formal economic models. But the first five and last four chapters are more accessible, and they would easily repay the efforts of anyone interested in the state of and prospects for economic theory. What makes the book so unusual and potentially important is that, unlike so many other attacks on orthodoxy, it is not—or at least is not merely—a methodological critique. Rather, it is a positive attempt to provide a new conceptual framework and an alternate set of tools for economic analysis.

There are a number of dimensions along which one could examine the differences between the Nelson and Winter approach and its more conventional counterpart. Perhaps the most useful theme is that of "realism" in economic theory. This is scarcely a new theme, of course. Almost every attack on mainstream economics since the days of Thorstein Veblen has used the issue of realism (in the sense of verisimilitude) against orthodox theory. The result has typically been more painful for attacker than for supposed victim. Part of the reason is that few critics recognized the complex and multi-leveled character of the methodological arguments involved. But after the methodological onion is finally peeled, one ultimately *does* want a more "realistic" approach, especially if it can be had without sacrificing many of the other attributes desirable in a theory. At a more intuitive level, the need for greater verisimilitude shows itself most clearly in the widening gulf between formal theory and what Nelson and Winter call "appreciative" theory—between the mathematical models economists build and the informal "stories" they tell to explain economic phenomena to themselves and others.

One of the principal theoretical structures that Nelson and Winter seek to renovate is the depiction of human decision-making in economic models. Here they reject the narrow "maximization" conception of rationality in favor of a richer portrayal. As one might expect, they are strongly influenced in this by the ideas of Herbert Simon, who long ago introduced into economic discourse the notion of "satisficing" behavior. More interestingly, they also draw heavily on the writings of the philosopher Michael Polanyi, whose epistemology of "tacit knowledge" has strongly influenced modern

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philosophy of science. The critical flaw Nelson and Winter detect in the usual portrayal of decision-making is not the "rationality" or profit motivation it assumes; rather, the fault lies in the sharpness of the conventional distinction between carrying out an economic activity and making the choice among alternative courses of action.

Economic activity (manufacturing the widget using a particular technique, let us say) is skill-like behavior that always involves a continuing process of choice; and economic decision-making (choosing among techniques for making widgets) is at the same time an activity that requires a good deal of skill. Doing and choosing are always closely intertwined. This way of looking at things leads Nelson and Winter into a subtle analysis of the behavior of individuals and firms, which, after two chapters of detailed elaboration, they distill into a form usable in abstract theory. Economic agents in their model engage in various behavior "routines," and, under various circumstances, they may search for new and better routines. But they never make "optimal" choices from clearly defined, pre-given menus of alternatives.

THE theoretical portrayal of individuals and firms is only the first step in economic modeling. Of equal, or perhaps greater, importance is the representation of how the actions of those individuals fit together to create the organized economic phenomena we observe. Here is another product of greater "realism": Like Schumpeter, Nelson and Winter insist on examining not hypothetical states of logical consistency among variables but the details of the process by which economic organization actually takes shape. At the most technical level, this insistence manifests itself in a shift from conventional "constrained optimization" modeling toward a "stochastic process" approach, a technique, often involving simulations on a computer, that traces out in stylized fashion the development of (for example) an industry over time. At a more fundamental level, the emphasis Nelson and Winter give to economic processes is, as their title suggests, a reflection of a concern with economic *evolution*.

The computer simulation models have all the elements of an evolutionary system. There is a selection process (the solvency constraint of a profit-and-loss economy); there is genetic memory (the aforementioned "routines"); and there is mutation (the use of a random—"stochastic"—search process to simulate such economic functions as research and development or even entrepreneurship). But the book's concern with evolutionary ideas goes well beyond the technicalities of modeling. Evolution is a lens the authors use to see economics, and the result is a powerful alternative to the conventional maximization-and-equilibrium model of how the economy operates.

Nelson and Winter are careful to avoid all the better-known pitfalls that have mottled the long history of evolutionary thinking in

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the social sciences. They steer clear of biological (or sociobiological) reductionism, recognizing that economic evolution is a cultural rather than a physiological phenomenon—it is an evolution of knowledge. They emphasize that the specific mechanics of biological evolution are not always a reliable guide in economics. (For instance, they describe their theory as "unabashedly Lamarckian," since, in the realm of culture, "acquired" traits can easily be inherited.) And they skirt the Panglossian fallacy, prevalent elsewhere in modern economics, that would equate the results of an evolutionary process with "optimality." As evolutionists of the social sciences, Nelson and Winter qualify for the more sophisticated tradition of writers like Sir Karl Popper, F.A. Hayek, and Kenneth Boulding.

Schumpeter the historian of thought was well aware of the abuse to which evolutionary ideas had been subjected in the social sciences, and he never described his own work in those terms. But the evolutionary theory of Nelson and Winter does in fact seem to capture that part of Schumpeter's thought which distinguished him from the mainstream. More than that, this evolutionary approach harkens back to the concerns and ideas of Adam Smith, who was less interested in the efficient allocation of known resources than in the division of labor, economic development, and the growth and elaboration of organized structure. These were also the concerns of Carl Menger, the nineteenth-century founder of the Austrian School from which Schumpeter emerged; and it may thus be fair to say that Nelson and Winter have captured some of what was most "Austrian" in Schumpeter.

BECAUSE the Nelson and Winter book represents the beginnings of a research program, many of its implications have yet to be elaborated. The book itself is concerned primarily with comparing the results of evolutionary simulations with those of the standard approach. Often, the two approaches give identical answers. (This is particularly so in the case of the more elemental analyses of the economic textbook, a fact that may come as a blow to the many critics—usually but not always of the left—who see the abandonment of the optimization paradigm as instantly liberating individuals and governments from the constraints under which economic reasoning has long placed them.) There are other situations in which the evolutionary approach yields unexpected results. And in all cases it provides a richer *explanation* for the answers it does give.

Consider the matter of aggregate-productivity growth. In the conventional or "neoclassical" growth model, one represents the entire economy as a single giant firm, one conceived in strict analogy with the standard optimization model of the individual firm. The economy in this model operates according to a "production function," which produces output (GNP) in an optimal fashion from inputs of capital and labor. Historically, the measured level of ag-

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gregate capital has grown at roughly the same rate as the output level, while labor inputs have grown less rapidly. This means that output per worker—"productivity"—has been growing. But it also means that growth in output cannot be attributed wholly to growth in inputs, given a constant production function. The function itself must also be shifting—for reasons unexplained by the model. Several studies reported the unexplained shift, blandly labeled "technical change," to account statistically for more than three-fourths of measured productivity growth.

During the last decade, of course, measured productivity has been growing at a much slower rate than it was during the 1950s and 1960s. Since the "explanation" of productivity growth in the conventional model is in fact an unexplained external force, that model has been singularly useless in diagnosing the sources of the decline. Using a search and selection model, Nelson and Winter are able to replicate actual productivity-growth data without assuming optimizing behavior or a production function. They are thereby able to connect that growth with a detailed structural model of microeconomic behavior, and thus explain it in more than a statistical sense. And, although they do not tackle the productivity-growth slowdown in this book, their model would seem to offer the possibility of explaining that phenomenon theoretically. Evolutionary models, as "macroeconomic" models, are very much in keeping with the present-day search for "microfoundations." They may indeed provide a path for returning to the Swedish-Austrian mode of macroeconomic thought that was developing before the Keynesian eclipse, an approach concerned with the details of the structure of production and consumption rather than with the unmediated interplay of economic aggregates. Indeed, *An Evolutionary Theory of Economic Change* may even have some small effect on the relative stature of names when the Keynes-Marx-Schumpeter sesquicentennial rolls around.

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The Economist's Public Library

EDWARD C. BANFIELD

***Lawrence J. White:* The Public Library in the 1980s: The Problems of Choice.** *Lexington Books. 208 pp. $22.95.*

THE public library is one of those institutions—others include the museum and the park—that are peculiarly American. As such it has special claim on our attention.

As invented by Benjamin Franklin, the library was an associa-

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tion of subscribers who found it advantageous to own and use books in common. With one exception, the "free" library did not appear until 1850; then the Boston Public Library quickly became the model that the other large cities copied. The free, or public, library, like the museum and the park and later the settlement house and the slum clearance project, represented an effort by the dominant Protestant elite of the cities to moralize the underlying population. At first it was regarded as an adjunct to the public school system. Philanthropists helped launch it, as they did the other institutions whose purpose was essentially the same. Andrew Carnegie, most notably, gave $50 million to build libraries in some 2,500 municipalities between the 1880s and the 1920s. Responsibility for the library, however, was always understood to belong to local government.

While the libraries were being built, changes were occurring that soon raised questions about their use. Technical schools, to which ambitious farm boys could go upon coming to the city, came into being; immigration from Europe was drastically reduced; and public schools became an effective instrument of mass education. When a popular demand for books developed, it was not for the "serious" and "improving" ones that the founders of the libraries had had in mind. Instead it was for westerns, detective stories, best-sellers, and hobby books. The corner drug store found that it could rent best-sellers, but cheap paperbacks soon put the rental libraries out of business; then television replaced reading almost altogether for many people.

DESPITE these changes, the public library survived and prospered. Today there are about 8,500 of them with total revenues of about $1.5 billion annually, 80 percent of which comes from local government. Lawrence J. White is an economist, and he calculates that from 1951 to 1979 there was a real growth in expenditure of about 3.5 percent; the rate was about 2 percent in the 1970s. Beginning in the mid-1950s and increasing in the 1960s, federal funds came to account for about 8 percent and state funds for about 7 percent of library receipts.

White draws on an extensive bibliography, which he supplements with some original research, to provide a comprehensive picture of the library's current situation and its growth in recent decades. Against this background he brings the analytical tools of the economist to bear upon two principal questions: How can the library's operations be made more efficient? And, what is the justification for public—that is, taxpayer—support of an institution that provides entertaining (as opposed to *improving*) books to only about 10 percent of the adult population, a 10 percent that is overwhelmingly middle-class to boot? His answers to these questions provide a set of recommendations for library policy.

The library, he says, is woefully inefficient: Choices get made through some combination of inertia, rules of thumb, librarian ini-

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tiative, and user pressure. The "sensible" (i.e., economically efficient) way to make choices, he says, is to aim to maximize the effectiveness of limited resources; this involves the establishment of concrete goals, understanding the terms of the necessary trade-offs among goals, and measuring performance and resources. Unfortunately, this advice merely states the library's concrete problems in formal terms; it does not help to solve them. How, for example, is the librarian to answer the question "Should rarely used books be removed from the shelves?" (This is one of 13 choices for which White says librarians lack criteria.) If there were some technical procedure for establishing goals, understanding the terms of trade-offs, and so on the librarian would have a problem of computation but not of choice. But, alas, there are no such technical procedures: The problem of choice remains, albeit in a new, impressive-sounding terminology.

White's answer to the other principal question—the issue of justification—is that with respect to its principal clientele, adults, the library serves no public purpose. It is frequently argued, he says, that cultural institutions—museums, orchestras, theatres and libraries—are beneficial to society in a general way: that they lift its tone, make it a better place for all to live, and perhaps make the individual a better person. These arguments, he says, are hard to evaluate, and in the case of adult users "it is hard to argue" that the library provides any such benefits. "In the end," he concludes, "one can only fall back on the notion that library use is a good thing and on the library community's assurance of just how good a thing it is." The claim that the library benefits the poor, or that it ever greatly benefited the immigrant, he calls mythical. His research shows that in 28 cities, immigrants and the poor were no more important a part of the library's clientele 40 years ago than they are now. That such figures may conceal an enormous influence that libraries have had on the lives of a gifted and ambitious few, and thus indirectly upon the welfare of the society, is a possibility he does not consider.

Children and students constitute the one group of patrons whose use of it justifies public support. This justification is the same as the one for free public education ("more literate, better educated people are likely to be more productive . . . make better public decisions . . . are less likely to become a charge on or a menace to society"). This confidence in the educational value of the library is not supported by data, and no mention is made of vandalism and other serious problems that the young presently create for many libraries.

As one might expect, White favors user charges for all but children and students. By means of user charges, the choices for which the library now has no criteria would be made by consumers rather than by librarians. The apparent fact that the consumer prefers entertaining books to serious ones creates no problem for White:

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"as long as people are willing to pay for their recreation, why not provide it to them?"

On that principle, why not provide this book-recreation in the way that most other forms of recreation are provided, that is, through the market? Surprisingly, White, the advocate of user charges, draws a line against the market on moral grounds. Markets, he tell us three times in three successive paragraphs, "depend upon greed and self-centered hedonism." Why consumer choice in the library is morally superior to consumer choice in the market he does not say.

White's policy recommendations follow directly from his analysis: more and better information; a "sensible" approach to the allocation of resources; joint degrees in library science and public administration; user fees for adults; and a focus on the needs of children and students. This is too "radical" a program to be accepted by the library community, he thinks, but in the absence of changes along these lines the public library may wither away.

In this reviewer's opinion, the book exemplifies the naive pretentiousness of economists' efforts to prescribe for non-market institutions. When one encounters a grandmother who has been sucking eggs for many decades with conspicuous success, one ought to hesitate before presuming to instruct her in the theory of egg-sucking. Instead one ought to try to find out how she does it, the presumption being that her departures from what theory prescribes may not be inefficiencies, but perhaps even the reverse. As other writers—for example, Oliver Garceau in *The Public Library in the Political Process*—long ago showed, organized librarians constitute an extraordinarily effective interest group; as Garceau says, the library is one of a class of services "that can be sold on the political market only by the eloquence with which it can explain the inexplicable." The librarians' eloquence would be of little avail, however, were it not for Americans' deeply-imbued confidence in the virtue and efficacy of all that goes under the name of education. Public opinion polls (cited by White) have repeatedly shown that the public, including that major part of it that has never entered a library, regards libraries as a symbol of values that it believes ought to be near the center of public life.

If this be the case, perhaps nothing would cause the library to wither more quickly than for it to follow—more precisely, to *try* to follow—the economist's well-meant advice.

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The Charismatic Constitution

JEREMY RABKIN

Aryeh Neier: **Only Judgment: The Limits of Litigation in Social Change.** *Wesleyan University Press. 265 pp. $17.95.*

Arthur Selwyn Miller: **Toward Increased Judicial Activism: The Political Role of the Supreme Court.** *Greenwood Press. 355 pp. $29.95.*

Philip Bobbitt: **Constitutional Fate: A Theory of the Constitution.** *Oxford University Press. 285 pp. $22.95.*

Michael J. Perry: **The Constitution, the Courts, and Human Rights.** *Yale University Press. 241 pp. $24.00.*

FEW legal scholars these days believe that constitutional law need have any actual connection with the Constitution. Raoul Berger, along with a few other legal antiquarians, has compiled a series of powerful scholarly works demonstrating that the most celebrated Supreme Court decisions of recent decades are at odds with the original understanding of the Constitution. None of our leading constitutional scholars has even thought it worthwhile to offer a response. They can scarcely be troubled to notice how little connection today's "public law" has with any defensible conception of law in general. Yet self-styled defenders of "civil rights" and "civil liberties" still march under the banner of the Constitution, as "public interest" champions invariably denounce President Reagan's regulatory appointees for disregarding "the law." And most constitutional scholars have been quite willing to go along.

These four books, however, all published within the last year, are striking—if not altogether refreshing—in their candor. Each is generally sympathetic to contemporary judicial activism, but disdains the conventional pretenses in defending it. For all their candor, they contain little serious or original thinking about the challenge of contemporary judicial power. But they are still of some interest for what they suggest about the spiritual state of the "court party" these days.

NEIER's book offers an overview of the mixed successes of "cause litigation" in a variety of fields over the last thirty years, sandwiched between introductory and concluding essays on "legitimacy." Curiously, Neier, a former director of the American Civil Liberties Union, has almost nothing to say about liberty in this book. But he is quite clear that "litigation designed to elicit policy-making"—the broad subject of the book—"differs fundamentally from traditional litigation . . . in that it is designed primarily to promote the interests of a class of persons rather than to correct the wrongs done to a particular litigant." The "role of the judge,"

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in Neier's view, "is to personify justice," and this now requires judges to champion the causes of the underdogs in American life. He does warn that judicial "legitimacy" may be threatened by excessive solicitude for environmentalists, insofar as they speak for a white, middle-class constituency well able to fend for itself in the political process. But otherwise, Neier's view of the judge's vocation meshes quite comfortably with the agenda of liberal politicians. (Thus, for example, Neier defines women who want abortions as another minority needing special judicial solicitude.) He expresses no recrimination over the judicial setbacks experienced in the late 1970s by the advocates of "welfare rights" and the opponents of capital punishment, however. He regards it as inevitable that judges bow to popular resistance on occasion. Politics is like that.

What is presumed in gentlemanly fashion by Neier is loudly trumpeted in Arthur Miller's rambling, often ranting book. It is all summed up in the book's subtitle—"The Political Role of the Supreme Court"—and Miller means "politics" in the crudest sense: ". . . it is the will of the judge and not the law that controls constitutional decisions," and therefore "what matters in the Court as in all other political institutions is who wins and who loses." Miller's cynicism almost undercuts his own plea for "more judicial activism," for to maintain his "realist" posture, he feels driven to suggest that even the activism of recent decades is "ultimately in the interests of . . . what is loosely called 'the ruling class.' By helping to siphon off discontent and channel it into innocuous forms, the Court enables that class to remain on top. . . ." But in the end he does conclude that "judicial activism is both necessary and desirable if it furthers the attainment of human dignity (however defined, itself a most difficult task) in America and if it helps Americans make necessary social and political adjustments as the ecological trap closes and the Age of Scarcity begins."

If Miller speaks to the unquestioned beliefs of today's trendiest law students, Philip Bobbitt's *Constitutional Fate* is plainly addressed to an audience of urbane, pipe-smoking law professors. Bobbit delights in philosophic references ("See generally, L. Wittgenstein, *Philosophic Investigations* [sic]"), poetic formulas ("In our theories shall be our fates"), and clubby allusions to the "poignant" personal drama of Professor Hart's Holmes Lecture at Harvard and the "elegant irony" of Professor Gilmore's Storrs Lectures at Yale. We are first offered a "typology of constitutional arguments"—historical, textual, doctrinal, prudential, structural—each of which turns out to have a fabled Ivy League law professor as its protagonist. Bobbit's own contribution is the "ethical argument."

We are assured that Bobbit's approach embraces only "ethical arguments that originate in a specifically *constitutional* ethos and hence avoid the difficulties of ethical and moral arguments generally." But it turns out that this "constitutional ethos" need not be

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derived from any particular clause in the Constitution itself. Rather, it gives "expression" to the "ethos" of the people living under the Constitution—though it need not reflect their actual preferences. "For if we accept the expressive function of the Court, then it must sometimes be in advance of, and even in contrast to, the largely inchoate notions of the people generally. The Court's role in the exercise of this function, after all, is to give concrete expression to the unarticulated values of a diverse nation." Bobbit has no trouble demonstrating that some of the Court's most controversial decisions —notably the abortion and school prayer decisions—are more easily explained and defended if one ignores the contorted applications of traditional arguments offered by the justices and views these decisions instead as embodiments of the "expressive function" based on implicit "ethical arguments." Oddly enough, in offering this approach, Bobbitt does not appear to intend any "elegant irony" of his own.

Michael Perry's *The Constitution, the Courts, and Human Rights* displays neither irony nor elegance, though it is in many ways the most rigorously argued of these books. Perry distinguishes sharply —doubtless too sharply—between "interpretive" and "non-interpretive" modes of judicial review, the latter comprising any decision that turns on "a value judgement other than one constitutionalized by the Framers." Perry attacks all efforts to evade or blur the difference between such "constitutional policymaking" and the Court's traditional role of enforcing the actual commands of the Constitution. And he goes to some lengths to show that, in contrast to this traditional role, "there is no plausible textual or historical justification for constitutional policymaking by the judiciary." But having lured the reader toward "interpretivism," Perry springs his rhetorical trap by claiming that adherence to this "forceful theory" would force the Court to abandon most of its modern First Amendment decisions along with *Brown* v. *Board*, to say nothing of the abortion decision. Once we then accept *some* place for "noninterpretive review," in Perry's argument, the heavens are the only limit—literally. Freed from any textual or historical constraint, the fundamental justification for "noninterpretive review" turns out to be "religious": "Such judicial review represents the institutionalization of prophecy. . . . Such review is an enterprise designed to enable the American polity to live out its commitment to an ever-deepening moral understanding and to political practices that harmonize with that understanding."

By no coincidence, this resort to mysticism crops up in all these books. Even Arthur Miller, so eager to tear away the traditional "myths" about the Court, holds that the Court must "merge the concepts of politics and religion—but in the language of law." In the end, he proposes to "adapt . . . the Platonic concept of 'philosopher rulers' " and "meld it with two other ideas—that of the Delphic Oracle and the Council of Revision" to make the Supreme Court a "Council of Elders, vested with the authority to make pronounce-

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ments on political theory and moral philosophy." The more restrained Aryeh Neier still wishes to see judges "personify justice." "On the surface, it might seem that the legitimacy of judicial authority derives from its rational legal basis," but Neier maintains that "the courts, particularly the Supreme Court . . . won greatest acceptance by assuming a charismatic role . . . in ordering an end to school segregation and demonstrating heroic qualities in steadfastly refused to be cowed by resistance." For Bobbitt, the Court can embody our national ethic and speak as our national conscience: "It says, 'We are such a people as would decide matters on this basis.'"

JUSTICE FRANKFURTER once protested that the Supreme Court could not be "a kadi dispensing justice under a tree." Though all of these authors are trained lawyers—and indeed professors of law—each is now quite happy to embrace a Court that is, in effect, a kadi without a Koran. It is not that they are always or altogether mistaken about the current "function" of the Court or the varied public expectations that feed its prestige. But they all, in varying degrees, conflate a political-science or sociological reconstruction of "functions" in the "system" with an actual grant of power in the Constitution. Needless to say, this sort of reasoning is profoundly subversive of constitutional order. One could just as well reason that, since the president has come to serve the "function" of a "father figure to the American people"—a favorite suggestion of social scientists, at least before Watergate—he must have the power to silence disturbing protestors, as a father disciplines unruly children.

At the least, one must say that the various formulas offered by these books to describe the "legitimate functions" of the judiciary are breath-takingly open-ended. None of them condemns any modern constitutional decision for overstepping the bounds of legitimate judicial authority. Given their astonishingly elastic conceptions of judicial "function," it is hard to see how any decision could be described as excessive. (Mr. Neier may think his notion of representing the unrepresented is an exception, but if so he is remarkably naive: Environmentalists are quite adept at explaining why their "quasi-constitutional" concerns are not adequately protected by the political process, and with arguments quite as compelling as Mr. Neier's defense of the Court's abortion decision.)

But there appears to be more at work in these books than a simple desire to flatter judicial power or anoint its most extreme ventures with "legitimacy." The resort to mystical and religious metaphors seems to answer a hungering in all these authors for a more edifying public life, a higher moral tone for our politics. Yet it does not seem to matter to them what the precise content or direction of this higher morality may be. They are peculiarly unconcerned to develop or elaborate such cliches as "human dignity" or "helping disadvantaged minorities compete more fairly," and it is not easy to ascertain the actual political causes they would associate

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with these abstractions. They all celebrate the inspirational value of *Brown* v. *Board* and seem eager for the Court to offer comparable moments of spiritual uplift. But none of them—even Mr. Neier, with his survey of "causes" in "cause litigation"—cites any current moral challenge as urgent as racial segregation in the 1950s; none has as much passion or enthusiasm for any particular issue on today's national agenda. What is plain, at any rate, is that the moral and political challenges of republican self-government in themselves do not inspire or engage these authors at all. And that is, of course, why they all try to find a judicial role beyond the Constitution.

At the same time, they are all eager to deny that their conceptions of the "judicial function" leave the Court with absolute power to enforce its own higher truths. Indeed, all find the weakness or dependence of the Court to be part of its special charm or at least its legitimacy. Each puts this argument in his own characteristic terms. In Perry's lawyerly presentation, the Court is always vulnerable to congressional withdrawal of its jurisdiction—and he emphatically insists on this court-stripping power in order to show that Congress has effectively consented to the Court's doings by not exercising this power. Bobbitt, in his literary way, finds that we have a "participatory Constitution" because the Court's "legal truths" are influenced by, even as they in turn influence, "the larger culture," assuring "a fluid, two-way effect on the ongoing process of constitutional meaning. . . ." Even Arthur Miller concedes that the Court should "make oracular pronouncements on matters of public concern" but these "pronouncements would then have to be translated into operational realities by the legislatures and the public administrators." Neier, speaking from the "practical" viewpoint of the "cause litigator," puts it this way: "If elected representatives of the people refuse to go along" with judicial directives "a judge possesses no power with which to compel their compliance except to condemn them as lawless" and therefore "the legitimacy of judicial policymaking power is validated by inherent judicial powerlessness."

PERHAPS it all reflects the decadence of contemporary liberalism: an eagerness to impose moral direction that has outlived any definite or vital moral impulse—and remains too squeamish for open exertions of force. Certainly these authors betray the underlying corruption in contemporary judicial activism: the open-ended moral pretensions that allow judges more and more power, while disclaiming any real responsibility for the way they exercise it. Michael Perry likes to see the judges take on the calling of "prophecy." He forgets that the prophets of the Bible did not think to share in the power of governing. But neither did they regard their missions as conditional on ultimate popular consent. And the armed prophets of history—those who took it on themselves to "personify justice," in Mr. Neier's phrase, and seized the power to deliver it, too—did

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not descend to the compromise and bargaining that gives "legitimacy" to Mr. Neier's judiciary.

The picture of the judiciary that emerges from these books rather reminds one of the medieval church, with its pretensions, its meddling in temporal affairs, and its avoidance of the ultimate responsibility for governing. Viewed from this angle, the most striking thing about these books is their underlying complacency. Writing well after the 1980 elections, none of these authors shows any great concern about the possibility of a destructive popular backlash against the excesses of judicial activism. Their appeal to the weakness and dependency of the judiciary plainly reflects confidence rather than fear. "Ecclesiastical princes," Machiavelli tells us, "are the only princes that possess states and do not defend them, that possess subjects and do not govern them; and the states, by remaining undefended, are not taken from them; and the subjects, by not being governed, do not mind it. . . ."

These books—like the performance of the judges themselves since 1980—offer little hope that judicial arrogance will at all diminish in the coming years. But then the Renaissance popes, preoccupied with their sponsorship of edifying and inspirational works of art, evidently had no inkling that the piety of princes and peasants was already stretched to the breaking point. They seem to have been taken quite unawares by the revolt of northern Europe.

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The Couch in the Courtroom

MARY TEDESCHI

William J. Winslade and Judith Wilson Ross: **The Insanity Plea.** *Charles Scribner's Sons. 226 pp. $15.95.*

Norval Morris: **Madness and the Criminal Law.** *University of Chicago Press. 235 pp. $20.00.*

For the Greeks, madness was an affliction visited on those unlucky enough to have angered the gods. The genius of this explanation lies in its association of madness with divinity—an association inferred, perhaps, from the inescapable mysteriousness that surrounds both. Modern culture has stripped this mystery of its mythological roots and given it a peculiar twist: God is no longer allowed to create madmen, but He is surely intimate with some psychiatrists. Fifteen years ago, in *The Triumph of the Therapeutic,* Philip Rieff described the increasingly priestly function of psychia-

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try in American culture. Writing of the ascendency of psychological over religious mores, he observed that "if the therapeutic [man] is to win out, then surely the psychotherapist will be his secular spiritual guide." It is a remark that goes to the heart of contemporary debate about the insanity plea. Revered in the courtroom and reviled by critics, psychiatrists are inextricably mired in the controversy that surrounds the plea. The relation of their profession to the criminal law is one of two issues that shape the contemporary debate.

THE other issue, of course, involves the criminal responsibility of the insane. The insanity plea—that modern response to an ancient question—is best understood in light of previous attempts to address the phenomenon of madness within the criminal law.

The Romans inherited from the Greeks the belief that madness signalled divine intervention, and Roman law deferred cautiously to those afflicted. While madmen could not themselves be punished as criminals, they were given lifetime guardians who were held legally responsible for any of their criminal actions. This compromise between protecting the citizenry on the one hand and accommodating divine design on the other at the very least ensured that someone was accountable for the illegal activities of the insane.

It was left to medieval theology to provide a theory of criminal justice that held the insane themselves to be criminally liable. Christian thinkers followed Augustine in believing that madness was a punishment inflicted by God for past sins, a belief which bore an obvious resemblance to the earlier Greek idea. But the Christian conception of sin revolutionized that idea. For while madness was not freely chosen, sin was; thus, the insane could be punished for those acts that preceded, and resulted in, their insanity—even if those acts were not in themselves illegal. In the Christian view, men were criminally liable for the very madness that subsequently deprived them of their freedom to choose.

Of course the Christian association of madness, sin, and criminal guilt made good legal sense only in a state that accepted the Church's theological principles. English law broke with this tradition in maintaining that crimes could be committed—and punishments justly assessed—even though the criminal did not possess his full powers of reason. For all their differences, the Roman, medieval, and early English views of madness and criminal guilt shared a crucial assumption: Someone—whether God, a guardian, or the agent himself—was responsible for the acts of the insane. Moreover, such acts should not and would not go unpunished.

In the *McNaughton* case of 1843, English law abrogated these traditional assumptions, and in so doing, it created the rule on which the modern insanity plea is based. McNaughton was acquitted of murder on the grounds that, by virtue of a mental defect, he did not know that what he was doing was wrong. Widely hailed for its progressive understanding of criminal guilt, the *McNaughton*

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ruling was made possible only through the combination of two powerful forces in modern English history: the urge for humanitarian reform, and the new-found optimism in science—in this case, the nascent science of psychology. Like psychology itself, the *McNaughton* rule has come a long way since its arrival in America. Now, to the general dismay of the psychological and legal professions, the American public insists on a harder look at *McNaughton's* natural heir, the special defense of insanity. These books, which dismantle the defense from distinctly different perspectives, are indispensable responses to that demand.

WILLIAM J. WINSLADE is an attorney and a psychiatrist, and coauthor Judith Wilson Ross, a lecturer in psychiatry—facts that lend special weight to their arguments in *The Insanity Plea.* Nominally organized around six recent cases involving the defense, the book is a rigorous and disturbing account of the influence exerted by mental health professionals in a criminal trial. There is Robert Torsney, the New York City policeman who killed an unarmed black 15-year-old in front of several witnesses, all of whom agreed that the attack was unprovoked; although he had no history of mental illness, Torsney was acquitted by an all-white jury after a well-known psychiatrist speculated that he had suffered a brief and rarely-documented "psychomotor seizure." There is James Grigson, aptly dubbed the "killer shrink," who in nearly 60 capital cases has urged the death penalty for criminals he calls "sociopathic." In all but two of these, Texas juries sentenced the defendant to death—this, despite the fact that "sociopath" was a category dropped from that psychiatric bible, the *Diagnostic and Statistical Manual,* 15 years ago.

And there is, of course, the case of John Hinckley Jr., acquitted last year for the attempted assassination of President Reagan and the shooting of three other men. It is for this case that Winslade and Ross reserve their sharpest and most instructive attack on the plea. The defense contended that Hinckley's insanity was manifest both in his bizarre attachment to Jodie Foster, whose love he hoped to win through this "historical deed," and in his unreasoned desire to emulate Travis Bickle, anti-hero of the movie *Taxi Driver.* Winslade and Ross point out that Hinckley's motives—historical fame and recognition from the girl he loved—have been regarded throughout Western history as legitimate and even laudatory. They also observe that nothing could be more *abnormal* than insisting that only a madman is unduly influenced by a movie or any other form of fiction. To the *Taxi Driver* defense they pose a telling question: Would anyone dismiss as insane a young girl who, inspired by a movie about Mother Teresa's life, emulated that woman, and eventually received a Nobel prize for charitable works? Upon concluding the obvious, the authors expose the ultimate inconsistency in the Hinckley defense: "It cannot be that good choices are our responsibility and bad choices are not.

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But the Hinckley defense argued that the good John Hinckley might have done was to his credit, while the evil belonged to something or someone else." Indeed, there is no better summation of the logic behind the *McNaughton* ruling itself.

Putting aside the concoctions of Hinckley's lawyers and psychiatrists, the manifest injustice of the verdict was in no small part a function of the legal standards that the judge and jury faced. Most states place the burden of proof for an acquittal on the *defense*; it must prove beyond a reasonable doubt that the defendant was insane, according to criteria which vary from state to state. In a federal trial like Hinckley's, however, the burden of proof is reversed; here the prosecution must prove—again beyond a reasonable doubt—the defendant's very sanity. As Winslade and Ross remark, if sanity depends to any degree on what transpires in a man's mind—and everyone assumes it does—this burden of proof is impossible to shoulder. Thus, peculiar as it seems, the Hinckley judge and jury were unjustly castigated for their verdict. For unless they could know exactly what John Hinckley thought in the months it took him to prepare his attack, his "sanity" could never be asserted without doubt. Nor, for that matter, could the sanity of anyone else.

Their analysis of the Hinckley case is a good example of what makes Winslade and Ross valuable contributors to the renewed debate about the insanity defense. To be sure, their exposure of the corrupt logic in the Hinckley and other rulings is itself a public service. More important—and here the authors' understanding of psychiatry is crucial—they are singularly adept in questioning whether psychiatrists belong in the courtroom at all. Of particular note is their analysis of the problem inherent in assuming that psychiatrists possess expert knowledge. Since *McNaughton*, the criminal law has assumed, however implicity, that psychiatry resembles empirical science. But as Ross and Winslade point out, no reasonable understanding of "expertise"—and certainly not the understanding on which a court accepts expert testimony—can include the variety of diagnoses and conclusions reached by psychiatrists. Psychiatry as a science can only suffer by comparison with other forms of forensic expertise. If ten ballistics experts offer distinct interpretations of a gunshot wound, each requiring a different jargon, any sensible juror will conclude that, whatever the scientific status of ballistics, it is useless for the purposes of a criminal trial. Of course, ballistics is not like that, but psychiatry is. Psychiatrists routinely contradict one another's diagnoses and conclusions—often in language that no layman could hope to understand. This fact speaks volumes about the state of their profession, but it does not clarify matters for the juror at all.

Worse, far from being taken for a confused witness whose testimony is useless, the psychiatrist is taken for an "expert"—whose merest speculation is given extraordinary weight. A juror sympathetically disposed toward the defendant can placate his conscience

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—whatever the facts of the case—by appealing to the psychiatric testimony most in line with his inclinations. After all, if an "expert" on the human psyche explains that the defendant, in a moment of classic schizophrenic delusion, killed a man who he thought was a rooster, by what right and with what arsenal of jargon is the juror to contradict him?

The Insanity Plea is a persuasive scorecard of past and potential abuses abetted by this anomaly of the criminal law. At the very least, one concludes from it that the plea requires a fundamental overhaul—if not the outright abolition urged by the authors. But the most compelling case for abolition would require a more detached analysis, one relying less on discrete abuses and more on the complicated philosophical concerns in which the defense took root. In *Madness and the Criminal Law*, Norval Morris gives the insanity plea and its stepchild, the plea of unfitness to stand trial, exactly the detached theoretical treatment they deserve.

MORRIS's book is a jurisprudential examination of attempts to intermingle the mental health and criminal law powers of the state. It is, for all its erudition, a very odd book. From the introductory acknowledgment to the National Rifle Association ("without whose intervention this book would not have been written") to the concluding chapter, which challenges Aristotle and all other champions of the principle that identical crimes must be punished equally, Morris makes his case with verve and refreshing irony. "You would be surprised," he writes near the end, "how much more sensible prisoners are about matters of punishment than are my colleagues at the University of Chicago Law School." Those prisoners should enjoy this book. For all its idiosyncracies, *Madness and the Criminal Law* may well be the answer to the insanity defense that its critics have long awaited.

Morris brings his formidable skills to bear on a number of intricate problems: the relationship between moral and criminal guilt; the limits of trying and sentencing the insane; the relevance of insanity to sentencing; criminal liability for involuntary conduct; and the justice, in criminal law, of anisomy, or treating like cases as unlike. "Some blunt hacking away is necessary," he explains, because "libraries are stuffed with discussions of the trees; the forest has been neglected." Morris's own best contribution to that literature is his attack on traditional justifications for the modern progeny of the *McNaughton* rule. At the heart of these justifications lies a claim as emotionally compelling as it is exasperating in its vagueness. Most generally, it demands that mercy be exercised by refusing to punish those who did not know what they were doing, or did not realize that what they were doing was wrong. How is it just, proponents of the insanity plea ask, to punish a man for acts whose meaning he does not understand?

Morris has three responses. The first involves the unexpected consequences of attempting to enforce this particular desire for

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clemency. He asserts that no reasonable understanding of "mercy" would sanction the indeterminate detention of the accused that is made possible by a plea of insanity or of unfitness to stand trial. If anything, it is *more* merciful to sentence a criminal for a specific period of time than to quarantine him indefinitely. Here Morris has a stock of horror stories to rival Winslade and Ross. Theon Jackson, a deaf-mute with no previous record of commitment or arrest, was declared unfit to stand trial after allegedly stealing $9.00. So certain was the Department of Mental Health in Indiana that it was unjust to try Jackson—who presumably did not understand the charges against him—that he was detained for three and a half years before the Supreme Court held that his detention was unconstitutional. Various legislative experiments have followed this ruling, but none has effectively addressed the problem of "unrestorable unfitness." And in fact no experiment can—for if "mercy" requires that a defendant comprehend the moral, social, and criminal issues involved in his trial, it follows that one who possesses no such capacity can be held in custody for the rest of his life.

Morris's second response to the demand for mercy is similarly rooted in the problems of policy. Here, he points to the ironic consequences of the insanity plea itself: Those least likely to use the plea successfully are precisely those it was invented to protect. No recent instance of criminal violence is as familiar as the Manson slayings of 1969. And surely no understanding of "madness" could exclude the behavior and ostensible mental states of Charles Manson and his cult before, during, and after their spree. Yet each was found guilty of murder—and sent to prison rather than the asylum.

It is a commonplace fact: After a crime as grisly and inexplicable as Manson's, the principles of the insanity defense are abruptly abandoned. No juror wants to allow a group of psychiatrists the opportunity to release a man like Manson. And so the insanity plea is corrupted in practice: Just as it cannot protect those for whom it was intended, so is it most likely to succeed for the defendant who always, except for his particular crime, seemed sane.

This discrepancy between the principles that underlie the defense and their neglect or manipulation in practice is the target of Morris's third arrow. Proponents of the defense assume that, in ascertaining a defendant's mental state, we can distinguish fairly between mad and bad, sick and wicked. Morris denies that we are so equipped: "We fail in this classificatory effort and are doomed to failure no matter how hard we try since the distinction surpasses our moral and intellectual capacities." "Mercy," in the sense intended by proponents of the plea, is the prerogative of God, not man; for only God—or some entity closer to omniscience than our psychiatrists and jurors—can distinguish between mercy and leniency.

In arguing that the insanity and unfitness pleas be abolished, Morris is far from urging wholesale punishment of the sick.

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Rather, he suggests that mental illness assume the status of other adversities relevant to punishment, such as the defendant's prior record or familial history of violence or impoverishment. For Morris, the special defense of insanity is no more legitimate than a defense of having grown up in a black ghetto. Both can be harsh extenuating circumstances relevant to sentencing, but neither justifies acquittal. In sum, "the English and American judges went wrong in the nineteenth century," and the first step in addressing the unjust consequences of the *McNaughton* rule is abolition of the special defense of insanity.

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A Supply-Side Scorecard

JOHN MUELLER

***Sidney Weintraub and Marvin Goodstein, eds.:* Reaganomics in the Stagflation Economy.** *University of Pennsylvania Press. 213 pp. $20.00 cloth, $7.95 paper.*

***Wm. Craig Stubblebine and Thomas D. Willett, eds.:* Reaganomics: A Midterm Report.** *Institute for Contemporary Studies. 232 pp. $14.95.*

REAGANOMICS is both an economic technique and a political philosophy, thus making it doubly difficult to address intelligently. "Economically ignorant moralism is as objectionable as morally callous economism," observed Wilhelm Roepke. "Ethics and economics are two equally difficult subjects, and while the former needs discerning and expert reason, the latter cannot do without humane values." If the divergent assessments of Reaganomics in these two volumes are any guide, we are far from a consensus on basic principles in either field.

Most of the contributors to *Reaganomics in the Stagflation Economy*, which is part of a series on "Post Keynesian" economics, find little that is right with Reaganomics. Laurence S. Seidman says it is "requisite to plan beyond Reaganomics. When monetarism and tax cuts have had their trial and been found wanting, a new approach will be needed." Yet these chapters were presented at a conference in October 1981, when President Reagan's economic program was just a day old. So instead of analysis based on experience, we find here theoretical and ideological predictions, most of which have not stood up well.

Seidman speaks for most contributors when he argues that "money wage inertia is the crux of the inflation problem," rendering tra-

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ditional policies of monetary and demand restraint both too costly in terms of unemployment, and relatively ineffective in reducing inflation. Needed, in Francis M. Bator's candid language, is "some inevitably meddlesome scheme of price oversight and direct, mandatory wage restraint"—that is, wage and price controls, or "tax-based income policies."

For the moment these perennial proposals from the economic left are not popular. Rather, the economic "mainstream," represented in *Reaganomics: A Midterm Report,* sees Reaganomics as basically sound. The Reagan administration is criticized for having adopted the extreme rhetoric of "radical" supply-siders, whose claims are said to have been discredited. "But behind the administration's rhetoric has actually been a quite traditional mix of restrictive fiscal and monetary policies," say the editors, "which many economists—including a number writing here—would argue are broadly what the economy needs." This mainstream view holds that a recession was necessary to reduce inflation, after which stable prices and lower tax rates may spur a lasting economic expansion. The largest clouds on the horizon are the projected large deficits after the economy is fully recovered, and it is argued here that these must be reduced by tax increases and spending cuts.

Quite apart from the gloomy atmosphere that prevailed in mid-1982, when these essays were presented, this interpretation has serious problems. How can large deficits be reconciled with "a quite traditional mix" of restrictive policies? And did the "radical" supply-siders really offer nothing but exorbitant claims for traditional macroeconomic policies? Thomas D. Willett and J. Harold McClure say that the whole debate over supply-side economics was between "mainstream" and "radical" supply-siders who disagreed over the speed and size of the response to tax-cutting, and especially over the "radical supply-side assumption that tax cuts *by themselves* will raise revenues and reduce inflation." Actually, not even Arthur Laffer based the theoretical case for President Reagan's tax cuts on immediate revenue increases, nor did he claim that tax-cutting is a sufficient policy for whipping inflation.

MUCH of the confusion about supply-side economics, even among supply-siders, stems from a failure to recognize that the same label is applied to two distinct groups. There is a large group of "supply-side fiscalists," who agree on microeconomic matters, and a sub-group of what might be called "classical supply-siders," who share these opinions but also hold distinct views on macroeconomics.

The supply-side fiscalists broadly agree, as Willett and McClure say, that "government taxing and spending policies have important effects on the incentives to work, save, and invest." Or, as Congressman Jack Kemp puts it, "When you tax something, you get less of it, and when you subsidize something, you get more of it." (Believe it or not, this statement is theoretically controversial.) But

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the supply-side fiscalists have disagreed relatively little about the size of these effects. By showing that high marginal tax rates reduce the supply of labor and capital, supply-side fiscalists have been able to reverse the traditional liberal-Keynesian policies of "stimulative" spending increases and "responsible" tax increases.

What divides the supply-side fiscalists are the same controversies that separate all macroeconomic schools—the proper monetary regime, the effects of a deficit, and so forth. The three main groups are the "Keynesian supply-siders," the "monetarist supply-siders," and the "classical supply-siders." All agree that cutting marginal tax rates increases supply, but here the similarities end. Keynesian supply-siders believe tax cuts increase demand; monetarist supply-siders argue they do not; and "classical" supply-siders (discussed below) believe that the demand effects always depend on international repercussions. If we keep this theoretical grid in mind some otherwise puzzling aspects of the economic debate become clear: why the classical supply-siders are a minority; why some supply-siders attack monetarism and others defend it; why some supply-siders believe the gold standard is essential, and others that it is extraneous—and why the economic "mainstream" is really a lot of tributaries.

THE classical supply-siders are considered "radical" mostly because they are saying two new things, not one, and their macroeconomic views are seldom fully analyzed (even by their friends). Since Keynes, the central macroeconomic problem has been defined as finding the best mechanism for matching aggregate demand with aggregate supply at full employment. Keynes's solution to a shortfall of aggregate demand was for the government to borrow idle money, or create new money, and spend it. The monetarists argue that Keynesian fine-tuning is itself destabilizing. They advise the government to maintain a steady growth of the money supply, in line with the long-run real growth of the economy. Whereas these two theories assume a closed national economy, the classical school takes a "general equilibrium" view of the world economy, relating domestic macroeconomic policy to the international flows of goods, capital, and monetary reserves. Robert Mundell of Columbia is generally considered the founder of this macroeconomic school, which now includes Arthur Laffer of USC. Both became convinced that only fixed exchange rates or the gold standard can provide an adequate macroeconomic regulator.

One of Mundell's discoveries in the early 1960s was important for Reaganomics almost twenty years later—partly in devising it, and partly in explaining its apparent failure in 1981-1982. Mundell realized that monetary and fiscal policy work differently depending on whether exchange rates are fixed or floating. Fixed exchange rates require a central bank to buy and sell international reserves (gold or foreign exchange) at a fixed price. Since these purchases and sales automatically expand or contract the basic money sup-

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ply, the central bank has little control. A budget deficit, if not accommodated by the central bank, will tend to raise interest rates and attract foreign capital. This increases the central bank's reserves, which expands the money supply and finances the deficit. Thus, under fixed exchange rates, monetary policy is "weak" and fiscal policy is "strong" in its effect on output and employment. Under floating exchange rates, a central bank can (in theory) control its money supply, but loses control over the exchange rate. A budget deficit will therefore tend to raise interest rates, but with a fixed money supply, capital inflows will then cause the currency to appreciate; thus the effect of the deficit is offset by a worsening of the trade balance. This is why, under floating rates, fiscal policy is "weak" and monetary policy is "strong" in its effects on output and employment.

This discovery led Mundell to suggest a "policy mix" for a country suffering both domestic inflation and unemployment: The government should "tighten interest rates and lower taxes (or increase government spending)." Tight money would improve the balance of payments, while the deficit, financed by foreign capital, would increase employment. This was an innovation, since traditional Keynesianism envisions monetary and fiscal policy always working in the same direction. Mundell added fiscal supply-effects to the model some years later, preferring tax-rate reduction to spending increases. This, in embryo, was the tight-money-plus-tax-cuts formula of Reaganomics. But one thing must be noted: The policy mix depended on fixed exchange rates.

THE classical supply-side analysis offers a very interesting interpretation of the performance of Reaganomics. Because of built-in tax increases, the recession began in July 1981, as Stubblebine and Willett say, with "a quite traditional mix of restrictive fiscal and monetary policies." Though tax receipts rose again in fiscal year 1982, the deficit increased because spending rose still faster, partly due to the recession. The first significant cuts in taxes and tax rates did not occur until late 1982 and early 1983. On the monetary side, the administration supported the monetarist policy of controlling the growth of the money supply while allowing the dollar to float. The enlarged budget deficit accelerated the rise of the dollar, at the expense of the U.S. trade balance. Economic recovery began at the end of 1982 after the Federal Reserve Board set aside its restrictive money supply targets (which checked the rise of the dollar), and after the net tax-cuts began.

In short, the classical supply-side analysis was in some respects superior to that of its critics. As long as the dollar floats, the power of the Fed will be vastly magnified. In one sense, this confirms the monetarist idea that "money matters." But the monetarist policy of targeting the money supply depends on the assumption that the demand for money is stable; this assumption is upset by a floating dollar. As the dollar rises, rising demand makes the same money

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supply more restrictive than expected; if the dollar falls, inflation will accelerate much more rapidly than anticipated. The Keynesian view that budget deficits necessarily stimulate the economy is also confounded by the floating dollar: A larger budget deficit mostly increases the trade deficit, and it can be reduced without much impact on demand, since the trade balance will tend to improve commensurately. This makes clear why fixed exchange rates are becoming increasingly popular, especially as the U.S. trade deficit promotes a dangerous protectionism.

However, the classical supply-side view is not free from problems. Even under fixed exchange rates, a policy of tax cuts and tight money is essentially a short-run strategy on the demand side. (The supply effects are permanent.) Under this policy mix we can expect revenues to expand in the long run, but to the degree that a return to full employment does not substantially eliminate the deficit, further action must be taken. The United States cannot, in effect, indefinitely borrow abroad to finance government consumption, any more than it can borrow indefinitely at home for that purpose. If inflation or devaluation is to be avoided, the debts must eventually be repaid, and this requires a reversal of the growth in the budget deficit and the international flow of capital. In the long run, the mainstream concern over large budget deficits at full employment is justified. But supply-side fiscalism correctly tells us that in order to avoid impairing long-term economic growth, the deficit must be reduced by cutting spending rather than by raising tax rates.

It is much easier to call for spending cuts than to achieve them because economic policy has implications well beyond economics. Supply-side fiscalism could not have avoided controversy, because it threatens what might be called the "moral imperative to redistribute"—a combination of egalitarian notions of justice and liberal Keynesian economic theory. This view is implicit throughout *Reaganomics in the Stagflation Economy*. If too much saving and insufficient consumption threaten the economy, then it is not only fair to tax the over-saving haves and distribute to the consuming have-nots; this is merely saving capitalism from itself. As President Roosevelt said shortly after the *General Theory* was published: "We have always known that heedless self-interest was bad morals; we know now that it is bad economics."

Supply-side fiscalism shows that high rates of saving are necessary for strong economic growth, and that serious efforts to redistribute income create economic disincentives. With progressive taxation, the high-income earner keeps a progressively smaller share of any additional income, and most recipients of transfer payments stand to lose their subsidies and perhaps pay taxes if they earn more income. The result is a general discouragement of income growth. Reaganomics seeks to reduce these disincentives by cutting excessive marginal income tax rates and limiting federal transfer payments to the most needy. As Michael Boskin points out in *Rea-*

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ganomics: A Midterm Report, the choice is not merely between "equity" and "efficiency": "The times of most rapid gains in the *relative* incomes of the poor and the minorities in the United States have been those of rapid general economic growth. Thus a painful dilemma arises as we are forced to choose between substantially increasing the level of well-being of future minority and low-income households versus the short-run harm of disrupting households that have become relatively dependent on transfer income."

But the promise of higher incomes in the long run is not a sufficiently powerful political argument when opponents worry less about the future well-being of the poor than about their present plight. The *New Republic*, for example, recently argued that the prospect of an immediate economic boom "was all that distinguished the Reagan program from a raw transfer of money from the bottom to the top. Without that promised economic boom, the moral basis of Reaganomics simply collapses."

Curiously enough, to judge by what economists call "revealed preference"—attitudes deduced from behavior—the Reagan administration seems to have accepted this utilitarian argument. President Reagan did not address the "fairness issue" in non-economic terms when making his original proposals, and his administration did not publicly address the issue until early 1983, when budget director David Stockman delivered a series of speeches. Stockman pointed out that when President Reagan took office, more than two-fifths of all federal aid to the "poor" went to those with incomes greater than 150 percent of the poverty level. He argued that Reagan cuts in social spending were targeted on recipients above the poverty level, and that total social spending under Reagan was little below President Carter's last budget proposals. This is important information, but it does not challenge the redistributionist premise that the fairness of an economic policy is to be judged by its impact on after-tax income. Once one adopts the utilitarian equation "income equals justice," the moral case for Reaganomics does depend on the state of the economy. Of course, in that case, so does the moral case against it—which is why some of the President's political opponents fear economic recovery.

THE moral justification of any economic program must be sought, not beyond freedom and dignity, but beyond supply and demand. It is surprising that President Reagan, who is such an articulate defender of moral values, has not evoked them in the debate over his economic program. Now, the common feature of the market economy, compulsory income redistribution, and socialism, is that they are all systems based on the disposition of property. The Judeo-Christian tradition sees property as having a twofold nature, expressed in the idea of stewardship. Stewardship confers a sphere of private property rights, sanctioned by higher law, which is protected from other individuals and the government. It also confers

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responsibilities, ordained by the same higher law, to support the government and use the property accountably.

Private property rights form the basis of prices and incentives in the market economy; but the market does not, by itself, fulfill the responsibilities of private property (even though a free market can long survive only in a society which does). This is why, if we have only three cheers to give, capitalism deserves no more than two. But socialism deserves no cheers because it rejects both the rights and the responsibilities of stewardship. And liberal income redistribution deserves only one cheer, because it weakens and blurs them: One person's responsibility to give is transmuted into another person's "entitlement" to receive, creating a redundance of rights which can only engender social disorder. Besides economic disincentives, redistribution also creates an inherent moral hazard. It undermines the ability and willingness of the strong to help the weak, and of the weak to help themselves. This is borne out by the growing share of the population which would be poor and unprovided for without federal aid. While there is a clear need for some social safety net—minimal, not comfortable—any truly humane society must give precedence to self-reliance, private insurance, local services on a human scale, and voluntary charity. We should prefer these methods to compulsory redistribution even if they were not more economically efficient.

Trying to justify Reaganomics on utilitarian grounds alone is doomed to failure; it is a curious sort of political philosophy which can be justified only by a prevailing economic wind. Economic recovery may be here, but the business cycle has not been abolished. And considering some of the rough edges which remain in President Reagan's economic program, his administration would do well to stop hiding its moral light under a bushel.

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Reviving Civic Republicanism

WILLIAM A. SCHAMBRA

***William M. Sullivan:* Reconstructing Public Philosophy.** *University of California Press. 239 pp. $19.95.*

A search is underway on the American left for a new set of theoretical roots. The old Marxian roots will no longer do, because of the failure of Marxism: There has been no crisis of the capitalist system leading to the worldwide ascendancy of the proletariat, as Marx had predicted. The left's dissatisfaction with Marx-

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ism, however, has less to do with its failure than with its understanding of success. Marxism's vision for the future—an equitably shared prosperity, followed by the withering away of the state—is based on an inadequate understanding of human nature and politics, according to many on the American left. It treats man as an economic animal whose primary needs are material, hence, capable of being satisfied almost entirely by modern technology. Politics, in the Marxian perspective, is merely instrumental to that economic end, and is therefore dispensable once material prosperity is secured for all.

The problem with this view, the left complains, is that it is almost identical with the debased view of human nature and politics that undergirds liberal capitalism. Marxism simply promises to satisfy through collectivism the base material desires that capitalism satisfies through the free market. A real alternative, the left holds, would replace liberalism's and Marxism's economic understanding with a political understanding. That is, it would recognize that man is above all a political animal, who finds fulfillment not through the enjoyment of physical goods, but through active, committed participation in a cohesive community. In this view, equitably distributed wealth becomes a precondition for the full, equal participation of all in the political community—not a signal that the state should wither away.

THIS communitarian vision is not likely to find theoretical sustenance in the modern political thought informing both liberal capitalism and Marxism. In premodern or ancient thought, however, the *polis*—an all-encompassing political community—played a central role, and economics a distinctly subordinate one. And so today we see many on the left turning to ancient political thought for new, non-Marxist theoretical roots. William Sullivan's *Reconstructing Public Philosophy* is an extraordinarily thoughtful, rigorously-reasoned example of that turn. It attempts to recapture for the left the ancient political teachings of Plato and Aristotle, and to forge from them a public philosophy for America which would serve as a genuine alternative to liberal capitalism. We have access to the ancient teachings, Sullivan argues, because they are embedded in an American civic republican tradition that has served, from the time of the Puritans to the present, as a powerful counterpoint to American liberal capitalism.

According to Sullivan, we are compelled by the crisis of contemporary liberal capitalism to turn to the ancient teachings implicit in our republican tradition. He argues that the tremendous prosperity generated by the post-war American economy is a thing of the past because of the energy crisis and the growth of international economic competition. Consequently, Americans are now forced to compete ever more fiercely for diminishing economic resources. If this competition is not to degenerate into a "classic war of all against all," America must find within itself a widely shared

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understanding of justice—a view of the common moral and political good—to temper the scramble for personal gain and allow for the equitable apportionment of what resources remain. The search for such an understanding will be complicated, however, by the fact that America's predominant tradition is modern liberalism. For liberalism, according to Sullivan, denies that a unifying public morality is necessary, or even possible.

Sullivan provides a familiar explanation for liberalism's skepticism toward public morality and politics in general. In the liberal view, man is by nature utterly self-regarding, governed by, and bent on satisfying, petty material desires. He is therefore at home in the marketplace, where material desires can best be satisfied. The political realm is not much more than a necessary evil—a secondary arena, within which the competition of individuals and groups for satisfaction is regulated. According to Sullivan, these liberal presuppositions, written into the American political and economic systems by the Founders, went unchallenged as long as an expanding economy seemed an inexhaustible source of private satisfactions. In America, economic growth took the place of a shared public morality.

Now that growth has (supposedly) ended and America faces the need for a shared moral understanding, the poverty of the liberal view is fully exposed. Liberalism's stimulation of self-aggrandizement has seriously undermined those moral and cultural institutions —the church, the local neighborhood, voluntary associations—that once helped restrain the mad pursuit of wealth; here, Sullivan draws on the work of Daniel Bell, Fred Hirsch, and Robert Heilbroner. He adds that it will be impossible to construct a shared moral understanding as long as we cling to the fundamentally amoral and apolitical premises of liberalism. Sullivan draws this lesson from an analysis of early liberal thinkers such as Hobbes, Locke, Rousseau, and Kant, and of recent liberals such as John Rawls, Robert Nozick, and Lawrence Kohlberg.

And so Sullivan turns toward the other, non-liberal tradition of American political thought, the "civic republican" tradition. He follows this strand of thought through the works of Paine, Jefferson, and Tocqueville, and notes its presence in political movements such as revolutionary republicanism, populism, and 1960s radicalism. This tradition, Sullivan assures us, will supply the foundation for the construction of a new, common view of the political and moral good in America, because it has roots reaching back to Plato and Aristotle—to the pre-modern view of the centrality of politics in human life.

The civic republican view will supply this foundation because it begins with man as self-overcoming citizen, rather than self-regarding individual. The "moral imperative to live according to the principles of justice and mutual support" is embedded in the "central symbols of the citizen and the commonwealth." Man is by na-

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ture a political animal—"the *polis* is, literally, that which makes man, as human being, possible"—and so the "political community is ontologically prior to the individual." To become fully human, man must immerse himself, through full, active participation in the life of the political community. "Self-fulfillment and even the working out of personal identity and a sense of orientation in the world depend upon a communal enterprise. This shared process is the civic life." According to Sullivan's civic republicanism, the *polis* must help man become fully human through a rigorous shaping and molding of character. A stringent *paideia*, or "moral-civic cultivation," must inculcate in the citizen *arete*, or virtue—the "disposition of a person whose conduct is guided by a shared value or principle rather than by private needs and desires." In order to shape character, the *polis* must reach into every aspect of life: "power and authority within the state" is linked with "the social, economic, psychological, and religious realms." The line between the public and private spheres fades away: "private and public, personal and collective sensibilities" are linked "in synoptic form."

So far, Sullivan's civic republicanism sounds suspiciously like recent suggestions from spokesmen of the American right that politics should be understood as "soulcraft," or that we should attempt to ground the American political order in the ancient doctrine of natural right. But Sullivan's civic republicanism distinguishes itself from conservative "soulcraft" by two noteworthy features. First, his civic republican regime would be radically egalitarian. A central principle of the tradition is the "equal moral dignity" of all citizens, in his account; all must be "enabled by common agreement and concerted public effort to take full part in the good life, that is, citizenship." Full citizenship for all will require "a widespread distribution of the necessities and rough equality of wealth." This egalitarianism will be supported by a second feature of Sullivan's civic republicanism: The chief virtue that it would cultivate seems to be an utterly self-forgetting compassion or concern. The education of the citizen builds on the "basic psychological dynamic" of the "imperative to respond and to care"; it reflects the "craving of the human self for a life of inclusion in a community of mutual concern." As citizens, we make an "unlimited promise to show care and concern to each other." Even freedom is redefined as a variety of compassion; freedom is the "capacity to attain one's good," and that is possible only in a "shared life" where citizens "show concern for and reciprocity to one's fellows."

SULLIVAN urges America, in its moment of crisis, to embrace this version of the ancient *polis* which, he insists, is implicit in one strand of the American tradition. The problem with Sullivan's proposal—and this problem will be shared by others on the left who seek ancient theoretical roots—is that the prescribed regime is at once too ancient to be appropriate for the American context, and

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yet too modern to be a true return to antiquity. The *polis* is an appropriate model for America, Sullivan argues, because it is already part of the American political tradition. He is at great pains to make this argument because he holds—based on his understanding of ancient practical reason—that any public morality for America must be drawn from its own traditions rather than be imposed from without. The attempt to impose a morality alien to American traditions, Sullivan understands, would simply be utopian; it would repeat one of the excesses of the modernity he hopes to transcend.

If there is, in the American tradition, an approximation of Sullivan's civic republicanism, it would be found in the thought of the anti-Federalists of the founding period. In their writings, we find many of the reservations about the capitalist liberal order that Sullivan shares. And we find such reservations in the purest form they are likely to assume in the American context, because they were formulated before, and in an effort to avert, the adoption of a Constitution that would thereafter lend a distinctly modern liberal cast to all American thought and practice. The late Herbert Storing turned to a study of the anti-Federalists precisely because he thought they might represent something like Sullivan's civic republicanism: The "anti-Federalists seemed to be of interest as defenders of at least residual principles of premodern, preindustrial, preliberal worlds." He came to see, however, that even the anti-Federalists were essentially liberals, "in the decisive sense that they see the end of government as the security of individual liberty, not the promotion of virtue or the fostering of some organic common good." In other words, nothing like the ancient *polis* is to be found in anti-Federalism—and if not there, then not anywhere in the American tradition. Individual liberty is a principle central to all strains of American thought; to ask us to abandon it in the name of an all-encompassing political community would, indeed, be to impose on us an ideology alien to our traditions.

While Sullivan reads too much antiquity into the American political tradition, he nonetheless does us a service by reminding us of the anti-Federalist strain of thought. Although its fundamental liberalism means that it cannot help us in the way he would wish—in the establishment of an American *polis*—it nonetheless can help us in a way more appropriate to the American regime. That is, it shows how we can temper some of the harsh, self-interested aspects of liberal capitalism without rejecting liberalism altogether. Anti-Federalism is implicit, for example, in local neighborhoods, voluntary associations, and churches—those "mediating structures" within which something like true communities can arise in the context of the liberal regime. As Tocqueville argued, such structures encourage Americans to rise above the crassest forms of self-interest without asking them to ascend to an impossibly self-denying altruism. It can be—and in fact now is—national policy to try to reinvigorate those structures, thereby cultivating a citizenship, or a

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"concern for and reciprocity to one's fellows," without departing from the liberal framework.

If Sullivan's civic republicanism is, in one sense, too ancient to provide guidance for the American regime, it is at the same time far too modern to be a genuine return to antiquity. The commitment to radical egalitarianism and the obsession with care and concern simply are not to be found in ancient thought. Aristotle, for instance, understood that men were radically unequal in their capacities for virtue—that they achieved "moral dignity" to vastly unequal degrees. Indeed, so unequal were men that some might be considered by nature slaves. As for care and concern, such virtues are absent from Aristotle's account of the human excellences in the *Ethics*. What we *do* find there are virtues that are anything but compassionate and self-forgetting. Magnanimity, for instance —the highest of the moral virtues—surely can serve the political community, but it is pursued by the citizen out of a desire for distinction and honor, not out of a caring and concern for fellow citizens. That Sullivan should overlook such manifestly inegalitarian and "uncompassionate" aspects of ancient thought suggests that he is not so much interested in recovering ancient thought as in drafting selected elements of it into the left's campaign for an egalitarian, communitarian democracy.

The final irony of Sullivan's project is that, though he sets out to find non-Marxist roots for his alternative to liberalism, in the end he, like Marx, is left waiting for a crisis of capitalism to usher in the golden age. Such a crisis is at hand, Sullivan insists, because of the end of cheap energy and the rise of international economic competition. But is it really to be supposed that a bit less gasoline and a few more Toyotas would succeed where the Great Depression failed? That such circumstances would bring Americans to abandon liberty and the hope for prosperity, for an economically stagnant, egalitarian, all-encompassing community? At any rate, it seems that OPEC—not capitalism—has collapsed, and that the American population is even now emerging from a severe recession without having torn itself to pieces in a "classic war of all against all." (That, incidentally, would have been peculiar behavior for a populace that Sullivan insists is capable of performing to the high standards of ancient virtue.) If liberalism's collapse is not imminent, and therefore the program of civic republicanism postponed, we can nonetheless be grateful to Sullivan for reminding us of a tradition of American thought that accepted liberalism only with reservations. And we can be thankful that this tradition informs important structures within our society, nourishing that form of community and citizenship appropriate to the American regime.

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"Policy Science" Today

LAWRENCE M. MEAD

David C. Hoaglin, Richard J. Light, Buchnam McPeek, Frederick Mosteller, and Michael A. Stoto: **Data for Decisions: Information Strategies for Policymakers.** *Abt Books. 318 pp. $28.00.*

Richard J. Zeckhauser and Derek Leebaert, eds.: **What Role for Government? Lessons from Policy Research.** *Duke University Press. 363 pp. $32.75.*

Thomas C. Schelling, ed.: **Incentives for Environmental Protection.** *MIT Press. 355 pp. $32.50.*

Howard Raiffa: **The Art and Science of Negotiation.** *Harvard University Press. 373 pp. $18.50.*

Amartya Sen: **Choice, Welfare and Measurement.** *MIT Press. 460 pp. $37.50.*

For the past 15 years, "public policy" has been a growing field in graduate education. A dozen or more schools claiming to train policy analysts and "public managers" have appeared. Of these the Kennedy School at Harvard and the Woodrow Wilson School at Princeton are among the best known. These schools, along with older public administration programs, have become an important source for the analysts staffing the bureaucracy, Capitol Hill, and lobby groups in Washington.

The schools claim to teach a "policy science" that helps policymakers achieve their purposes more efficiently. In effect, this science counsels nothing more than rational action: Set your goal, then choose the most economic means of reaching it. The programs add training in economic techniques—statistics, modeling, decision theory, etc.—for estimating quantitatively the pros and cons of various policy options.

Unquestionably, these methods have improved policy-making, or at least made it more self-conscious. Politicians have learned the power of economic argument to parry or stifle opposition. They are much more careful to justify what they want according to "the numbers"—economic costs and benefits—than they once were. The age of "sophisters, economists, and calculators" that Burke feared is upon us.

However, policy science has remarkably little to say about the political aspects of policy-making. Policy analysts tend to take stands only on the economic issues in policy, not on the moral and political questions that, much more often, dictate decisions. For this reason, they are frequently overruled by politicians. Their influence has been most notable in the more-rarefied, less visible areas of policy, such as economic regulation, energy, and defense.

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In these books, political factors in policy are consistently exiled to the fringes of analysis. The first four works are texts or monographs of the kind used in policy schools. *Data for Decisions* states policy science's most basic claim: Policy-making is improved by the systematic use of information. Public managers need the facts about a program before deciding what to do about it. The authors describe various information sources—such as official statistics and surveys—and what each is good for. But it turns out that the "facts" apart from politics settle hardly anything. Even before data can be consulted, the nature of the problem and a strategy to solve it must have been defined. These steps require political judgments that reach beyond the realm of information.

The Zeckhauser and Leebaert volume purports to discuss the proper role of government, but most of the chapters are about fairly technical aspects of economic, health, and regulatory policy. These are subjects which policy science treats well, but whether government should have programs in these areas depends again on political judgments of a larger order. In a moment of candor, the editors admit that government's legitimacy has declined in the last 20 years even as policy science has learned more and more about how to make government work. It seems the public is worried about the size of government—whether or not it works. Government's expanding activities have simply outrun its traditional mandate, and economic reasoning alone cannot provide a new one.

The Schelling book shows that these larger political questions can overwhelm even the best policy analysis. The book takes the view, favored by many economists, that the best way to control pollution is through incentive mechanisms rather than conventional regulation. Instead of forbidding pollution, the government should tax it, so firms have a financial incentive to reduce it. This way, the firms that can reduce pollution cheaply will do so, while those that cannot will pay to go on polluting. More reduction will be purchased overall for the same cost than if a rigid rule forced all firms to reduce discharges to the same level. The general strategy is persuasive, and Schelling offers three case studies to show that it could work in practice.

Nevertheless, the incentives theory has made little headway in Washington. The Environmental Protection Agency has just begun to apply it to some aspects of air pollution control. By interviewing staff members in Washington, Schelling's team found that incentives simply do not mesh well with the politics of regulation. Democrats and environmentalists, who want strong pollution controls, fear that to allow incentives might weaken their case by appearing to grant delinquent companies a "license to pollute." Republicans and business groups who want weaker controls would prefer to cut back regulation—not make it work better. For both sides, the overriding issue is the extent of regulation, not its efficiency. And that issue turns on questions of government's au-

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thority and legitimacy that stretch quite beyond the economic case for incentives.

One reason policy analysts often lack political savvy is that policy science is loath to accept the reality of political conflict. Economic methods tend implicitly to define the policy-making problem as one of choice rather than power. A single decision-maker with the authority to make policy is assumed to exist. The role of analysis is to give him advice about options. Raiffa's book takes the more realistic view that power is shared among multiple decision-makers. He uses game and decision theory to show how negotiators can map out their strategies and those of opponents. However, he seems most interested, not in helping any one side win, but in showing how all of them can achieve outcomes that are rational for the collectivity they share in, be it a firm, a nation, or the international order. He neglects the political problem of actually motivating this cooperation. For all his apparent realism, Raiffa still assumes that rational argument is the ultimate influence on policy.

THUS, policy science is unpolitical. A second, and related, problem is that it has very little to say about the proper extent of government. This is one reason why policy analysts tend more often than not to accept existing programs. They may seek to improve them, but they seldom ask the larger, and more political, question whether the programs should exist at all. This has made them one force, alongside client group and electoral pressures, behind the expansion of government.

Many would attribute this tendency to the fact that analysts belong to the "new class" that favors—and often works for—big government. There are, however, more philosophical explanations rooted in the nature of economics, the core of policy science. As a science of optimization, economics must assume that the goals against which policies are judged have already been set by others. In most instances, economic reasoning can question policy only instrumentally, by showing that it does not achieve the goal specified, or fails to do so efficiently. But the goal must be specific and distinct from the program. Goals themselves can be questioned only in the few instances where they contravene economics' limited theory of what government should do. That theory says that government should intervene in society only to compensate for the private market's failure to allocate resources optimally. Government should provide "public goods" (public services, like national defense, that cannot be produced for profit), prevent or control monopolies (e.g., public utilities), regulate against "externalities" of production (e.g., pollution), and a few other things.

There have been several well-publicized instances where analysts did question existing programs, but in each case they could posit specific goals or appeal to the economic theory of government. In the 1960s, Robert McNamara and his systems analysts at the

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Department of Defense questioned many weapons systems desired by the military in light of national security goals as the analysts interpreted them. Similarly, evaluators showed that many Great Society social programs hardly improved their clients' skills and earnings as Congress intended; as a result, funding was reduced. Most recently, economists helped convince Congress to cut regulation of the airline, trucking, energy, and securities industries, since controls only protected existing firms and there were no market failures to justify them.

Unfortunately, most government programs lack specific goals and the economic theory does not apply well to them. Perhaps some social programs can be justified as answers to the "externalities"—such as poverty, crime and welfarism—associated with the underclass. Perhaps federal water projects are justified investments in public goods. And perhaps not. Without clear guidance, analysts are predisposed to accept most claims on government as legitimate. This has made it easier for interest groups to place their desires on the public agenda. And this, in turn, has contributed to the massive buildup in federal programs over the last 20 years.

Amartya Sen discusses perhaps the deepest reason that economics is reluctant to say what government should do. In welfare economics, the traditional doctrine has been that we can say little about what people's preferences are, let alone judge them. We cannot measure them precisely, compare them across individuals, or prefer one to another. This belief is a major reason that most economists want government to serve all interests rather than make political choices among them. And on these assumptions, as Kenneth Arrow proved, there is no sure way to add up individuals' preferences to get society's. The social preference may be unstable or result only from imposing one particular preference undemocratically on others.

Sen shows that these problems arise in theory only because economic man is so unpolitical. He is a "rational fool," a "social moron" who never talks over preferences with others or cooperates to realize them. In fact, people do communicate and cooperate. Sen proposes revisions in the standard assumptions about preferences so that politics looks more feasible. However, he offers no theory of the ends people seek or should seek in politics. Preferences, though better revealed, are still only the constraints within which individuals or governments calculate best options. Economics remains a science only of optimization, of means rather than ends.

In sum, policy science has no doctrine of things political. Without one, it is politically passive—irrelevant to much of policy-making and a ratifier of group demands. The reply that political issues can, and should, be left to the politicians is not persuasive. Policy scientists want their calling accepted as a profession, but a true

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profession is characterized by commitment to a creed that protects the social interest served by that profession. Only with such commitments will society grant a profession the autonomy to set its own standards. Doctors and lawyers, for instance, serve their clients just as policy analysts do politicians, but they will not serve them in any way they ask, only in ways compatible with the larger social interest in health or justice. Policy analysts are trained, like academics, never to misrepresent facts or findings, but they need not adhere to any ethic that might limit the political ends they will serve.

The public policy schools do not neglect political and moral issues. Most require that students study bureaucratic politics and ethics along with economics and statistics. However, the economic basis of policy science prevents them from giving politics and ethics the weight they deserve. In policy curricula, political studies inevitably take second place to economic training; they simply do not lend themselves to the mathematical rigor valued by public policy faculty—most of whom are economists. More important, students need not take a stand on political and moral issues. Positions are presented as matters of personal taste, reflecting the belief, so central to economics, that value judgments are arbitrary.

Yet policy science requires political commitments to solve its political problems. Both the frequent irrelevance of economic analysts to decisions and their tendency to serve interests indiscriminately are due to their desire to have a place in policy-making without such commitments. The situation could be resolved in two ways, both of them requiring more clearcut moral beliefs. Analysts could take the traditional position of public administration that the roles of politicians and experts are separate. The former should make policy, and the latter should carry it out. At most, analysts would offer advice on the cost and administrative implications of options—which is often all that policy analysis offers to do. The claim of policy science to decide in broader terms what government should do would be dismissed—and this claim is much of the problem. But though this position would limit the political role of analysts, it rests on its own kind of political commitment: to serve only the democratic political order rather than specific political ends.

The second solution is for analysts to be more explicitly partisan than they are now. Rather than forswear politics, they would be expected to have a political philosophy touching on the major issues in their area of policy and on the proper role of government. This means that they could not pose as impartial experts, and they could not work for just any politician or program. However, they would also have more influence, because they would understand their patrons better and thus obtain a fair hearing for their analysis. At the same time, their tendency to admit all claims would be checked, because their political stance would force them to favor programs for some interests and not others. Like the first,

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this solution would only formalize a role analysts often play now. But by making their political commitments explicit, analysts would be more accountable; they could no longer hide behind the facade of policy science.

THESE moral commitments are necessary, in the end, because "rational" action poses moral problems in politics that do not arise in economics. The economic notion of rationality is modeled on how economists assume that buyers and sellers behave in a pure marketplace, where no moral problems arise. Each actor is responsible for himself, and the market is assumed to force all to buy and sell at prices that are socially optimal. But in politics, action is collective, and it is not self-evident who speaks for the public. There are, of course, representative institutions that articulate a social will, but we cannot assume, even in theory, that the political marketplace works perfectly. If all men are as self-seeking as economic man, no political structure can prevent the capture of government by narrow interests.

For this reason, political rationality has always required moral restraint. A community can achieve an overall public good only if its various groups observe limits on their own immediate claims. Hence the paradox that in politics, unlike the marketplace, rational action for the collectivity depends on *non*-rational—civic, dutiful, restrained—action by individuals and groups. It is no accident that earlier political thinkers seldom championed rationality per se. They spoke of "statecraft," or building up the authority of government, and of instilling "civic virtue" in citizens. For only on these moral bases could government restrain self-seeking and eventually achieve a public interest.

To demand political commitments from analysts is to demand that they behave according to principles, like other members of the governing class. Otherwise, the intelligence they offer will not be worth their tendency to break down limits to group claims. The moral problem in policy-making is simply greater than any intellectual one. As Macaulay said in opposition to the first policy analysts, the British utilitarians, "What society needs is a new motive—not a new cant." Without ethics, policy science may turn out to be a contradiction in terms. The ancients had it right: Politics, not economics, is the master science.

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Domestic Politics

DELBA WINTHROP

James S. Fishkin: **Justice, Equal Opportunity, and the Family.** *Yale University Press. 200 pp. $18.95.*

Jean Bethke Elshtain, ed.: **The Family in Political Thought.** *University of Massachusetts Press. 354 pp. $22.50 cloth, $10.00 paper.*

Jean Bethke Elshtain: **Public Man, Private Woman.** *Princeton University Press. 378 pp. $6.95.*

FOR 2,500 years the family has been a theme of tragedy and occasionally of comedy. Plato first made it a concern of political philosophers. In the *Republic*, Socrates was asked to prove that justice is good in itself—that is, that living justly under a just regime is the necessary and sufficient condition of happiness. Socrates and his interlocutors set about designing a polity to which anyone could freely be devoted because it is just, and therefore good. The men agree that children of exceptional or inferior ability must be taken from their parents and appropriately placed in a hierarchy of merit, not birth. With much reluctance, they then deny the ruling class private property and families altogether. Female as well as male guardians are taught to make war, and both are to make love only (and as much) as eugenics dictates. Children are to be reared in common as brothers and sisters; every parent will be a parent of every child in a given generation, and every child the child of every parent. The city as a whole must be one big happy family so that, unlike Antigone, no one will have private ties in whose name to oppose public authority.

These arrangements, we are told, will work only when philosophers rule as kings and queens. They can rule only after having persuaded the inhabitants of some city to go into voluntary exile, leaving behind them their children under the age of ten, to be molded as citizens of the new order. Socrates's scheme seems ridiculously impossible because it requires some men and women to abandon the families they have, and all others to agree not to make new families. Even were it possible, this justice would be, on balance, undesirable. The "irrational," "unjust," and very strong desire that human beings have for families of their own is an indication that the public good and private happiness can be quite distinct from one another.

IN *Justice, Equal Opportunity, and the Family* James Fishkin rediscovers some of this Platonic truth, and applies it to contemporary politics. According to him, the central doctrine of modern liberalism is that only equal opportunity can legitimate the

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distribution of goods in society. Equal opportunity entails, obviously, the principle of distribution according to meritorious achievement. Fishkin, however, supplements this widely accepted view with his principle of "equal life chances," or "background fairness." By this he means that, since we do not "merit" the race, sex, family background, or ethnic origin with which we begin, none of these factors ought to affect where we end up. Equal opportunity means not just running the race by the same rules and not just beginning at the same starting line, but having the same coach. A procedurally fair competition that someone is likely to win because he is well fed and bred by privileged or ambitious parents is still unfair.

Do we then want to say that our parents have no right to improve our life chances? Unlike Plato, no liberal philosopher has the courage to go so far, even in a speculative vein. "Autonomy of the family" remains dear to us. In neither the practice of Lyndon Johnson's Great Society nor the theory epitomized by John Rawls's *A Theory of Justice* have liberals been willing to violate the integrity of the family for the sake of justice. So liberals are inconsistent. From this observation Fishkin concludes that liberal public policy can have no coherent direction, and that intellectual probity bids us to embrace a "limited liberalism."

In addition to being about 190 pages too long, *Justice, Equal Opportunity, and the Family* is seriously flawed. First, in keeping with a current academic fashion, Fishkin relocates the core of liberalism from politics to economics. Traditional liberalism's first promise was that of an equal right to consent to government; its central concern has not always been equal distribution of goods in society. Second, although Fishkin denies that he has in mind anything more radical than equal opportunity, he virtually subsumes the principle of equality of result under his requirement of background fairness. After all, less need be done to equalize results if unequal beginnings have already been effectively neutralized. It is especially this new requirement that makes the family a problem for liberal justice. Third, while Fishkin is really talking about a problem that calls for moderation in the *application* of liberal principles, he claims to have shown the principles themselves to be rationally indefensible. The concern for the family that tempers our ardor for liberal justice is dismissed as merely an element of "conventional morality." For Fishkin, there is nothing special about this particular value. In fact, the title notwithstanding, this book is not about the family at all.

What makes the book not only trivial but almost comical is its complete silence about the greatest threat posed today to the reigning moral consensus. Not once does Fishkin mention that our attachment to the family is believed by some to have been the obstacle to equal opportunity, not only for economically or culturally deprived minorities, but for fully half the human race. One need not be a feminist to wonder how, in 1983, any American

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political scientist could write a book about justice and the family without ever taking up the current complaints of so many women.

JEAN ELSHTAIN, author of *Public Man, Private Woman* and editor of and contributor to *The Family in Political Thought*, is a political theorist by profession, a feminist by conviction, and a mother of four for reasons she ought to explain. Elshtain must be taken seriously. She writes with intelligence, spirit, and, often, refreshing good sense. Her intention in *Public Man, Private Woman* is to attest "as honestly as possible to the truth of the human condition" or, alternatively, to "voice the discontents of society's silenced, ignored, abused, or invisible members" and "proffer reasons for that suffering in order that the silenced may find a voice, cry out for justice. . . ." Elshtain's honesty, or sense of justice, requires her to bring to bear on the tradition of political thought the concerns of women heretofore unstated, and to inform feminist thought with the political perspective it has lacked.

Political thought, by Elshtain's account, has traditionally distinguished the private and the political. She says the private exists because shame is "basic" to human beings, shame of "our body, its functions, passions, and desires." Politics originates in an awareness of the possibility of intentional human agency. As an intentional activity of human beings, politics is most visible to us when opposed to the natural. Nature's power, it happens, is most obviously embodied in woman, in her sexuality and natality. To escape the tyranny of nature, political men and their traditional spokesmen have not merely denied women a voice in politics, but have defined politics in opposition to the virtues most characteristic of women: "responsibility toward the helpless, the vulnerable, the weak; gentleness, mercy, and compassion." Further, they have bestowed greater dignity on politics, the "realm of freedom," than on the everyday realm of nature, or necessity. And in excluding women from the public realm they have denied them their very humanity, for "human beings [are] creatures who give a spoken account of themselves."

Elshtain does, as she admits, write from a point of view, but her claim to treat the "fathers" of the political tradition without *ressentiment* is fair. Moreover, she is no easier on her sisters than on the fathers, and much of *Public Man, Private Woman* consists in a critique of the writings of contemporary feminists. Because they have dismissed without study the tradition of political thought for its misogyny—or have studied it only to document its misogyny—feminists have unwittingly assumed many of the erroneous political positions of that tradition, from the power politics of radical feminists to the elitism of liberals to the obliteration of "self-reflective human subjects" by Marxists. Moreover, many have unconsciously absorbed the tradition's private/public dichotomy to no good end. Even as feminists tend toward overconfidence in women's ability to transform politics when given their rightful

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share in political authority, they reveal their defensiveness about their (feminine) concern for the everyday world. As a consequence they have made the family, now weakened by additional forces, a scapegoat. The intent of Elshtain's writings is as much to defend the family before feminists as it is to improve the politics of men and women.

Our politics, she believes, will be improved in overcoming liberalism. In her essay "'Thank Heaven for Little Girls': The Dialectics of Development," Elshtain suggests that discrepancies between what liberalism's official ideology promises and what liberalism actually delivers to women have the unintended benefit of forcing thoughtful women to undertake a critical reconstruction of liberalism. Political speech in general and liberal speech in particular have abstracted from the private, passionate concerns with which women especially have always been preoccupied. What women would say in a reconstructed political context is to be determined in the "ideal speech situation" of "critical theory." In this perfectly democratic situation, no speaker is made to speak or to listen. Even if "on the basis of tests of coherence, internal consistency, and plausibility, the political thinker may have the better case," he or she can do nothing to coerce the agreement of an unwilling speaker.

In the meantime, Elshtain can suggest what the politics of these embodied speakers might look and sound like. The clearest image drawn from our experience is that of the handicapped marching and wheeling to demand their rights and their dignity. Elshtain's reader may be hard-pressed to distinguish her "ethical polity" and "politics of compassion" from the liberal welfare state and its politics of self-interest. They differ here because the handicapped's movement "represents . . . a powerful participatory ideal and embodies a less exclusionary definition of the moral and political community." The political participation of women (and men) liberated from liberalism consists in demanding that politics serve our private, albeit universal, needs.

Women's going public in this way will not mark the end of the private/public dichotomy, according to Elshtain. A militant democrat is presumably not just a nagging wife. But how the two differ in either form or content is not quite clear. Elshtain repudiates liberalism for its elitism and sexism, but especially for its separation of reason and passion. She fails to appreciate the purpose of the "abstract" formalism of its politics and discourse. Liberalism's empty forms, because empty, give us time to gather our rational forces in resistance to nature's tyranny, be it that of our own bodies' needs, or of the speaker who voices his needs most vociferously, or of those who refuse most intransigently to listen for others'. Without some such separation both men and women are in danger of losing their humanity. Elshtain forgets or tacitly rejects the *raison d'etre* she herself gives for politics.

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If anything unites the contributors to these three books, it is their disaffection from liberalism, guided by Marx, Freud, Habermas, and Rawls. They assert or imply that liberalism (or, for some, liberal capitalism) either endangers the family as it now exists or precludes its becoming what it ought to be, namely more egalitarian. Unfortunately, none shows precisely how a transformation of liberalism inspired by egalitarianism would benefit the family.

In fact, because their political radicalism is accompanied by philosophical complacency, none of these would-be defenders of the family mounts an adequate defense of it at all. Elshtain argues elegantly that children need the family for their individual development. But why do adults, male and female, need children? Why must erotic desire culminate in marriage and children? Why not in free love? Why not, as a prophetess once taught Socrates, better in homosexuality, politics, and philosophy? What is the explanation that would satisfy the embodied reason of the feminist, or any other kind of reason? While Elshtain contends that politics must be enriched by an account of woman's experience, by "the values and language of 'mothering,'" she omits from her defense of the family precisely the account of the human needs she has felt and fulfilled as a mother.

In sum, the political theorists presently engaged in rethinking the family and politics have not yet said enough to enable us to answer the very difficult questions first raised by Plato.

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Integration and Local Politics

NEAL DEVINS

David L. Kirp: **Just Schools.** *University of California Press. 374 pp. $19.95.*

The issue of race still troubles many of America's schools. Are students better off in neighborhood schools? Do "magnet" schools—those which specialize in vocational training or advanced studies—attract a representative cross-section of students? Should a school system focus on educational achievement or racial distribution? And how should a system respond to minority-group opposition to busing?

Even more pressing is the question of whether there is a "correct" method of integration, one that extends beyond any single

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locality. The principal actors in many of these desegregation dramas—the Department of Justice and the NAACP Legal Defense Fund—have been steadfast in their insistence that uniform standards be applied throughout the nation. The Department of Justice refuses to pursue mandatory busing in desegregation cases, and Assistant Attorney General William Bradford Reynolds has claimed that such remedies "are threatening to dilute the essential national consensus . . . that racial discrimination is wrong and should not be tolerated in any form." The Department maintains that remedies such as busing cannot be enforced because communities do not want them. Against this, the Legal Defense Fund insists that all desegregation remedies be based on black-white student population ratios. In Nashville, Tennessee, for example, the Legal Defense Fund argued on appeal that a district court order focusing on neighborhood schools and educational remedies be overturned—despite the fact that the local NAACP argued in favor of such a remedy before the district court.

The uniform solutions of the Legal Defense Fund and the Justice Department are equally simple-minded. Both overlook the fact that since school districts are unique, they have very different experiences of desegregation. Charlotte-Mecklenburg, for example, has been quite successful in implementing a mandatory busing plan because of support from pupils, parents, and city leaders. At the other extreme, public opposition to busing has left Boston's public schools more segregated today than they were ten years ago.

This discrepancy between the theory and reality of desegregation is the subject of David Kirp's *Just Schools*. Kirp sets out to demonstrate that "thinking about racial justice solely in terms of uniformity is inappropriate." He does this by telling the stories of five California communities—San Francisco, Richmond. Berkeley, Sausalito, and Oakland—in their efforts to attain racial justice in the public schools. These stories suggest that law, politics, and morality will manifest themselves differently in any community that tries to eradicate racial injustice in its schools.

Kirp's thesis is appealing, and his presentation convincing. Oakland schools, for example, have more minority students than white students; thus the primary concern among blacks was getting their share of decision-making responsibility, not having a racially balanced school system. Berkeley saw itself as a national symbol and thus took on desegregation, as well as a host of experimental education programs, voluntarily. At the other extreme, industrial Richmond experienced a popular overturning of its voluntary desegregation plan and the liberal school board which proposed it. Sausalito, a school district with less than 1,000 students and an extremely wealthy white population, saw most of its white students flee when black separatists gained control of its voluntary desegregation plan. Finally, San Francisco, through a combination of mayoral politics, school board inattention, and short-sightedness on the part of civil

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rights groups, continues to endure extended and unproductive desegregation litigation.

The book's focus on local school-board politics is most germane in considering the effectiveness of voluntary desegregation plans. Each of the Bay Area communities encountered problems in addressing the "race and education" issue. Yet, except for San Francisco, each also developed mechanisms for addressing the issue that generally satisfied school administrators, the board of education, and the minority community. This obviously does not mean that all problems of racial injustice will solve themselves over time, but it does refute the contradictory theories of the Department of Justice and Legal Defense Fund. Each community operates within a unique set of circumstances; what "works" for one may be impossible for another.

Kirp's case-study approach convincingly shows that the "race and education" question is often a matter of local politics. This is especially true in the cases of Sausalito and Berkeley. Sausalito voluntarily desegregated its schools in 1965 and in the process brought in black separatists to run the system. By the late 1960s, the Black Panthers had seized control. At one school board meeting, "Panthers carrying steel staves and accompanied by guard dogs ringed the room." "In spring 1969, the Black Panthers began a school breakfast program. . . . [A local] newspaper reported: 'One young man clearing [the breakfast] tables led about a dozen children briefly in chants of "free Huey" and "power to the people," accompanied by a clenched fist Panther salute'." The disarray caused by the Panthers led to the flight of most white students from the district. On the other hand, Kirp notes, Berkeley "was looking beyond its own circumstances to take into account national perceptions, and beyond the nation to the court of international opinion." As one school district report suggested, "What we do, and the spirit in which we approach the problem of segregation in our schools, is important to the future of our country and of the world." Surprisingly, Berkeley's experiments included a school solely for blacks and one solely for Chicanos—schools demanded by black and Chicano separatists. The federal office of Civil Rights, however, "concluded that the two schools' policy of racial exclusivity violated Title VI of the 1964 Civil Rights Acts."

DESPITE differences among these Bay Area communities, several themes have emerged. Blacks have shifted their initial emphasis from racial balance to concerns over quality education and decision-making responsibilities. Popularly-elected boards consequently have taken a substantial share of school district decision-making away from professional administrators. The school districts also have shifted their concerns from race issues to fiscal problems (a change caused in part by California's Proposition 13). Despite this movement away from the issue of racial imbalance per se, questions of racial justice still influence local policy-making. Kirp

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concludes that "the quest for racial equality is a long-standing one, the end elusive, the dilemmas deep and likely to endure."

Kirp's introduction brilliantly illustrates how muddled the concept of racial equality is. He begins by describing the universalistic vision of *Brown* v. *Board of Education*:

> Once racial barriers were lifted, it was supposed, there would exist neither white schools nor black schools, but "just schools." When the dual school system was dismantled, the constitutional rights of blacks would be secured; so too would their opportunity for social and economic equality. Blacks, like whites, would then be free to succeed or fail on the basis of merit, not caste.

The vision has been blurred, however, as civil rights proponents have advanced the disparate—and sometimes conflicting—goals of desegregation, integration, and redistribution.

Kirp's is a descriptive work, not a piece of advocacy: He hopes the parties and institutions involved will "learn from what has worked (and failed) elsewhere." Unfortunately, the five communities analyzed in *Just Schools* do not form a representative sampling of the experiences that other school districts face in addressing racial injustice. As Kirp points out:

> San Francisco, Berkeley, and Sausalito were politically liberal, Oakland and Richmond not hopelessly conservative towns. The legacy of progressivism had left most of them free from machine control, in the hands of good government forces and professional managers. The black population was relatively small . . . and for that reason not especially threatening. Bay Area blacks were also politically sophisticated, and could count on liberal white allies in energizing a nascent civil rights movement. If change could not occur here, some reasoned, it could not take place anywhere in the country.

This background to Kirp's story suggests that many of the emotionally-charged and politically complex issues raised in places such as Detroit, Boston, Memphis, and New Orleans were not of concern in the Bay Area. Thus, although each Bay Area community faced different sorts of problems, their experiences might prove uninstructive in majority-black school systems in the North, or in the South, where Jim Crow laws were per se violations of *Brown*. The Bay Area experience also provides little insight into some of the newer and more vexing desegregation issues: Must a school district subject to desegregation liability ignore its collective bargaining agreement and dismiss teachers on the basis of race, not seniority? Can such a district administer exit exams that have a disproportionate impact on minority students? And can it refuse either to hire or promote teachers who fail competency exams which have a racially disproportionate impact?

KIRP's failure to look beyond the Bay Area also has the unfortunate consequence of making the "race and education" issue ap-

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pear to be a matter of local politics with few legal ramifications. Absent in the book is a general description of the legal precedents that influence policy-making. Kirp suggests that "although the prevailing understanding presumes that legal sanctions are needed for policy reform, the facts are otherwise." He recognizes, however, that "the possibility of recourse to the courts has affected the political dialogue." In many areas of the country, this description would seem a feat of understatement. By now, most of America's largest urban centers and nearly all of its southern school systems have been subject to some sort of legal proceedings. We need to know more about the legal norms that have emerged, so that we can see what role legalism may have played in Bay Area politics, and so we can understand the significance of Bay Area actions for the rest of the country.

The "legalistic model," however, is too limited for Kirp. Legalism speaks to uniform principles applicable to all school districts in the nation; it is a least common denominator of sorts. Kirp's concerns are of a different nature. Rather than speaking in terms of principles, *Just Schools* occupies itself with people and events, and concludes that uniform solutions are impossible because community response varies widely.

Legalism has a clear role to play in this issue, however. Unless school districts act affirmatively to eliminate the vestiges of racial discrimination, the universalist vision of *Brown* will be lost. Clear legal standards are a necessary step toward realizing this vision. Yet the courts would do well to intervene only as a matter of last recourse, and to set limits on their intervention. Kirp suggests that courts generally follow this limited model, but the evidence is against him. In Boston, the federal district court has seized control over many aspects of school administration. Politically-minded district court judges in Nashville and Dallas have recently put forward "compromise" solutions, focusing both on community desires and legal principles only to be overturned by federal courts of appeal. The Nashville case is particularly egregious: In it, the appellate court held that modifications in desegregation remedies must comport with current black-white student population ratios, even if such an approach cannot effectively desegregate the schools and is educationally unsound.

Just Schools portrays a world of communities struggling with personal preferences and varying standards of proper behavior. This struggle does not always produce the outcome one might like. In Richmond, for example, black pupils can transfer to predominantly white schools only if they arrange for their own transportation. Yet a busing plan adopted by the school board led to near chaos in the Richmond system. Moreover, Richmond blacks seem generally satisfied with the current arrangement. It appears that local politics might offer a better solution to the "race and education" question than judicial recourse, as Kirp's example of San Francisco suggests.

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Kirp concludes with the suggestion that local policy-makers "working within their own political frameworks . . . [should] identify how best to solve the questions of race and schooling, selecting among the numerous alternatives adopted elsewhere or adopting an approach more precisely attuned to local needs." Although some school districts will wind up in court, this "learning from others" seems a very reasonable solution. Of course, a district must also recognize that the situation it faces is unique. *Just Schools* is an eye-opener, not a repair guide.

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CURRENT READING

"Global reach" revisited

A recent article in the *Economist* (July 23, 1983) suggests that "dependency" theorists must contend with a new phenomenon: The emergence of multinational corporations based in the Third World.

> Multinational companies used to be seen as the bogymen of the third world, exploiting cheap labor in the poorer countries and bullying dependent governments. But increasingly the more dynamic countries of the third world are growing their own multinationals. The motives for these companies expanding out of their home markets are the same as those that have driven western multinationals: the search for greater sales inside import barriers; the need to escape from stagnant sales at home; a yearning for cheaper centres of production from which to service their regional market. Two new studies measure the trend. South-east Asia . . . provides an example of several burgeoning companies.
>
> Hyundai, the South Korean shipbuilding and industrial concern with sales last year of $7.6 billion, has grown bigger than France's Michelin and Britain's Rio Tinto-Zinc. In a list of the top 500 non-American industrial companies, Taiwan's Walsin Lihwa, an electrical and electronics group, outranks Distillers of Britain, Atlas Copco of Sweden and DeBeers of South Africa, with its last year's sales of $3.7 billion. Four state oil companies from Kuwait, Mexico, Brazil and Venezuela all figure in the top 11. Such newcomers are not just big, they are becoming multinational with their factories and holdings abroad.
>
> Up to 50 third-world countries have companies with direct overseas investments, according to a study to be published later this year by the Paris-based, Nestle-financed Institute for Research and Information on Multinationals (IRM). Professor Louis T. Wells, a multinational watcher at the Harvard Business School, has put the number of foreign manufacturing and trading subsidiaries of third-world companies from 15 countries at 1,300. . . .
>
> The emergence of multinationals from the newly-industrialising countries spells changes for the giants of international business. They will face competition in some markets, as well as opportunities for

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co-operation in joint ventures. The development could help smooth relations between poorer countries and multi-national business. . . .

Most of the third-world companies' investments are in other developing countries. The companies reflect the aspirations of their countries of origin. They aim to progress from processing their own resources and substituting for imports at home. Often their first foreign expansion is among their own ethnic-minority markets abroad. They compete there with western multinationals, using the advantages of local knowledge, and often succeed in finding lower labour and production costs. They also hope to gain access abroad to foreign technology that is not always available in their home countries. For example, India firms abroad get access to international technology deliberately kept out of the home country.

A recent United Nations study of 23 third-world multinationals found they were less capital-intensive than developed-country multinationals; their output was more suited to third-world consumers; they used more locally-made materials and they competed more on price rather than on brand names, advertising and other rich-nation concepts not always appropriate to the third world. The third-world multinationals were also judged more likely to enter joint ventures locally because they had less to protect (in products and technology). . . .

But third-world multinationals are still a long way from matching American or European multinationals for technical innovation. Which is a big reason why third-world multinationals are so keen on joint ventures with western ones.

Om

The following press release was recently distributed by the Age of Enlightenment News Service (United States) for the Maharishi International University:

For Immediate Release [July 7, 1983]

During the past year, a team of scientists at the central campus of Maharishi International University in Fairfield, Iowa, led by Dr. David Orme-Johnson, have carefully analyzed the correlation between the number of individuals participating in the group practice of the Transcendental Meditation and TM-Sidhi program at MIU—the Super-radiance program—and changes in the U.S. stock market, U.S. treasury bonds and bills, and the value of the U.S. dollar against foreign currencies.

The scientists have found that since March, 1982, eighty percent of the stable growth in the stock market occurred during or immediately following high numbers in the Super-radiance program at MIU. . . .

Dr. Orme-Johnson pointed out that upturns in the stock market have preceded recoveries during each of the eight recessions of the past four decades, leading the recovery by five months on the average. The market began its current rise in August, 1982, and by

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January, 1983, improvements in major economic indices, including unemployment, signalled an end to the recession. Peak levels of participation in the group dynamics of consciousness at MIU have consistently led significant rises in the stock market. . . .

The MIU research team has also found significant correlations between the value of U.S. Treasury bonds and bills and the value of the U.S. dollar and the number of participants in the TM and TM-Sidhi program, or Sidhas, at MIU. Whenever the numbers at MIU have been high, the dollar has been up, the value of bonds and bills has been up, and the stock market has been up. The scientists are calling these "All-America Days."

The founder of the Maharishi Technology of the Unified Field, Maharishi Mahesh Yogi, explains that this effect of raising coherence in world consciousness and creating integrated national consciousness in every country is the spontaneous result of a technology which automatically brings the life of the individual and society into alliance with all the laws of nature.

Maharishi explains that the basic cause of problems is violation of the laws of nature by the whole population. Everyone in every nation has been violating the laws of nature and creating stress in individual and collective consciousness. The accumulation of stress must result in turbulence and negative trends in society and problems and suffering everywhere.

Until a quarter of a century ago, the four forces—electromagnetism, the weak interaction, the strong interaction, and gravitation—were understood to be the fundamental forces of nature. However, with increased purity and creativity in world consciousness resulting from the world-wide practice of Transcendental Meditation over these past twenty-five years, gradually all these four forces have been found to have their common source in the unified field—the self-referral, self-sufficient infinite potential of all the laws of nature.

Through Transcendental Meditation the conscious mind experiences and identifies itself with the unified field in the state of pure consciousness, transcendental consciousness. In this way all thoughts and actions of the individual begin to be spontaneously in accord with natural law. Through this technology of consciousness the individual gains the support of nature for all success in life. He ceases to make mistakes and stops creating problems and suffering for himself and others.

A small proportion of the population practicing the Maharishi Technology of the Unified Field is sufficient to enliven the unified field of natural law in the whole of national consciousness, bringing the support of the infinite organizing power of nature to all of national life. This results in increased creativity and productivity, growing national self-sufficiency and self-reliance, and integrated national consciousness. The people enjoy increasingly perfect health, greater cultural integrity, and more problem-free society, and the government begins to enjoy problem-free administration.

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Announcing an

ESSAY COMPETITION

First Prize $1000 and Publication in

THE Public Interest

ELIGIBILITY
The competition is open to full-time or part-time graduate students in the fields of education, law, business, the social sciences, public policy, and public administration.

Entrants must not yet have reached their 28th birthday and must not have previously published in THE PUBLIC INTEREST. Two or more students may collaborate on a single entry. If it should be the winning essay, the co-authors will share the $1,000 prize.

SUBJECT MATTER
The essay may deal with any domestic policy issue, whether national or local. Choice of specific subjects is unrestricted: economic growth, welfare, education, the judiciary, regulation, trade, military planning, immigration, crime, scientific research, support for the arts and humanities—these are only examples of policy areas that could be discussed.

DEADLINES
All entries must be postmarked no later than January 13, 1984. The winning entry will be announced no later than March 30, 1984. Publication of the prize essay take place in a forthcoming 1984 issu THE PUBLIC INTEREST.

FORMAT
Submissions must be typewritten, dou spaced on only one side of each page. P must be numbered. There is no minim length for submissions, but they may exceed 7,500 words.

Every entry must have a detachable page showing the author's name, addr telephone number, and educational af tion. A self-addressed, stamped (20¢) e lope must be included. If you want y manuscript returned, you must also inc a self-addressed envelope large enoug hold the manuscript, with sufficient p age already affixed.

Handling of references in the essay mus consistent with the University of Chi *Manual of Style.*

Send entries to:
ESSAY CONTEST
THE PUBLIC INTEREST
10 East 53rd Street
New York, New York 10022

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